(19,299.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 224.

THE BOARD OF TRADE OF THE CITY OF CHICAGO, PETITIONER,

vs.

CHRISTIE GRAIN AND STOCK COMPANY AND C. C. CHRISTIE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED AUGUST 9, 1904.

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a United States of America, Sct.
To the Board of Trade of the City of Chicago—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an order of Appeal filed in the Clerk's Office of the Circuit Court of the United States for the Western Division of the Western District of Missouri, wherein Christie Grain and Stock Company and C. C. Christe are Appellants, and you are Respondents, to show cause, if any there be, why the judgment and decree rendered against the said appellants as in said order of appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Wm. C. Hook, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this 5th day of August in the year of our Lord one thousand nine hundred and two.

WILLIAM C. HOOK, Judge.

United States of America,
Western Division of the Western
District of Missouri—Sct.

I hereby acknowledge due service of the within Citation this 7th day of August, A. D. 1902.

HENRY S. ROBBINS &
FRANK HAGERMAN,
Attorneys for Respondent.

KARNES, NEW &
KRAUTHOFF,
Attys. for Western Union Telegraph Company.

GAGE, LADD & SMALL,
Attys. for Postal Telepraph Cable Co.

b In the Circuit Court of the United States for the Western District of the Western Division of Missouri.

Board of Trade of the City of Chicago,
vs.
Christie Grain and Stock Company, et al.

It is hereby stipulated that the depositions of the following witnesses, taken in the city of Chicago before Max Whitney, Special Master, in the suit of Board of Trade of the city of Chicago vs. O'Dell Commission Company, pending in the United States Circuit Court for the Southern District of Ohio, may be filed and read as depositions in the above entitled cause:

C. D. French; Grant W. Kenney; Robert H. Nye; John S. Watson; Walter C. Hough; Charles K. Nims; James B. Heth; Charles C. Christie; Wm. E. McHenry; James E. Boyd; W. S. Crosby; Samuel Powell; Austin Wright; William J. Fox; Geo. F. Stone; Wm. S. Warren; Walter Comstock; R. S. Worthington; L. L. Kellogg; Louis K. Whitcomb; Henry Behl; Edward P. Whitford; Frederick E. Crawford; James F. Morgan; Charles M. Baker; William E. Griffiths;

A. B. JENKS &
HARKLESS O'GRADY & CRYSLER,
Attys. Deft.

H. S. ROBBINS & F. HAGERMAN,
For Complainant.

1 United States of America, Sct.

Be it remembered that heretofore, to wit, on the 18th day of April, A. D. 1901, there was filed in the office of the clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, a bill of complaint in the cause wherein the Board of Trade of the City of Chicago is complainant, and Christie Grain and Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph-Cable Company and Gold and Stock Telegraph Company are respondents.

Said bill of complaint is in words and figures as follows, to wit:

2 In the United States Circuit [—] for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain and Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph-Cable Company and Gold and Stock Telegraph Company, Defendants.

Bill of Complaint.

In the Circuit Court of the United States for the District of Missouri:

To the Honorable Judges of the Circuit Court of the United States, for the District of Missouri:

Board of Trade of the City of Chicago, resident of the City of Chicago and State of Illinois, brings this, its Bill, against the Christie Grain and Stock Company, a corporation organized and existing under the laws of the State of Missouri, and having its residence and principal place of business at the City of Kansas City, in said State, C. C. Christie, a citizen of the State of Missouri and a resident of said Kansas City, the Western Union Telegraph Company, a corporation organized and existing under the laws of the State of New York, the Postal Telegraph-Cable Company, a corporation organized and existing under the laws of the State of New York, and the Gold and Stock Telegraph Company, a corporation organized under the laws of the State of New York, and thereupon your orator complains and says:

3 I. That it is a private corporation organized under a special charter granted to it by the State of Illinois on the 18th day of February, 1859; that the objects of its incorporation are "to maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and disseminate valuable commercial and economic information and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits"; and that it is given by its charter power to sue and be sued, receive and hold property of all kinds, and dispose of the same by sale or otherwise, and to make such rules, regulations and by-laws as it may think proper or necessary for the government of said incorporation and its affairs; and also the power to admit such persons to be members, and expel such members as it may see fit; in a manner to be prescribed by its

rules, regulations and by-laws and generally to do and carry any business that is usually conducted by Boards of Trade or Chambers of Commerce; but that as your orator is informed by counsel, it is not, by its charter, given the power to conduct a telegraph business, nor does said charter impose on your orator the duty of furnishing to the public or any person whatsoever, the knowledge or quotations of the prices made in transaction between its members within its Exchange Bill.

II. That the defendants, Western Union Telegraph Company and the Postal Telegraph Cable Company, are engaged in conducting a general telegraph business throughout the United States, and the Gold and Stock Telegraph Company is a subsidiary company operated by the Western Union Telegraph Company for the sale and distribution of market quotations and news, and the said C. C. Christie is the president and manager of the said Christie Grain and Stock Company; and your orator is informed and believes, and therefore charges the
4 fact to be, that the said Christie Grain and Stock Company is engaged in the business of conducting a bucket shop or other place wherein is conducted or permitted the pretended buying or selling of the shares of stock or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought or of delivering the property so sold; and wherein is conducted or permitted the pretended buying or selling of such property on margins; and when the party buying or selling any of such intend
property, or offering to buy or sell the same, does not actually to receive the same if purchased, or deliver the same if sold; and wherein is conducted the business of making [of] offering to make, contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of any grain, provisions, cotton, stocks bonds or other securities wherein both parties thereto, or said Christie Grain and Stock Company contemplate or intend that such contracts, agreements, trades or transactions, shall be, or may be, closed, adjusted, or settled according, or with reference to the public market quotations Trade or
of prices made on any Board of Exchange upon which the commodities or securities referred to in said contracts, agreements, trades or transactions are dealt in, and without a bona-fide transaction on such Board of Trade or Exchange; and wherein both parties, or said Christie Grain and Stock Company contemplate or intend that such contracts, agreements, trades or transactions, shall be, or may be, deemed closed or terminated when the market quotations of prices made on such Board of Trade or Exchange for the articles or securities

named in such contracts, agreements, trades or transactions, shall reach a certain figure.

III. That your orator has at present about eighteen hundred members; that it has provided in the City of Chicago an Exchange building which cost upwards of $1,000,000 and that the yearly cost to your orator of maintaining such building and conducting such exchange is more than $240,000, more than $100,000 of which is raised by yearly assessments upon its members, and that each membership in said Exchange is now worth for the purpose of sale or transfer, the sum of $2300.00, and any person of good character and business integrity can become a member of your orator, upon application to your orator and paying its regular initiation fee, or by acquiring in lieu thereof, from a member, a transfer of an existing membership, which is readily purchasable. And your orator has provided within said Exchange building, for the exclusive use of its own members only, an Exchange Hall, where many of its members meet every business day between the hours of 9:30 a. m. and 1:15 p. m. (except on Saturday, when the market hours are from 9:30 a. m. until noon), to buy and sell for themselves or as brokers for their customers, for present and future delivery, all kinds of grain and hog products, the value of said transactions aggregating many million bushels of grain and many million pounds of hog products annually, and having become so large that said Exchange has become one of the great grain and provision markets in the United States. That such purchases and sales are permitted by your orator, to be made, and are made, only during said market hours, and by open viva voce bidding, and the knowledge of the prices thus made on said transactions during said market hours upon said exchange have become a species of property of such large value to your orator, that telegraph companies are willing to pay your orator large sums of money for the privilege of receiving instantaneously said quotations and selling the same to their customers; and many persons throughout the United States who are engaged in the grain and provision business are willing to pay, and for many years have paid, said telegraph companies large sums of money therefor. The present market price or prices which said telegraph companies are able to receive from their customers for the instantaneous and continuous quotations of your orator are as follows:

From Chambers of Commerce outside of the City of Chicago, of from $150 to $300 per month; from individuals outside the City of Chicago by telegraphic instrument known as the

"Morse" Instrument, from $125. to $175. per month; from same persons served by instrument known as "Tape Ticker" from $6. to $25. per week; from persons in Chicago $4. per week and upwards; and for periodic but not continuous quotations, as follows:

For quotations every fifteen minues outside of ticker district $20. per week; for like quotations every thirty minutes, $10 per week; for four quotations daily, from $10 to $20 per month, depending upon the number of articles quoted.

That your orator realizes from the sale of said quotations in the City of Chicago alone, more than $10,000 per year, but that said quotations are of such a peculiar kind of property that their value and your orator's ability to sell the same depend upon your orator's retaining the power to confine the transmission and distribution of said quotations to such telegraph companies, and other distributing agencies, as will contract therefor with your orator, and the value of said quotations to your orator will be much impaired, if not wholly lost, if persons are allowed to receive or take without right, or surreptitiously or by theft, and when so acquired, to use the same or distribute them to the public for use—the value to your orator of said quotations depending upon your orator's preventing the said quotations from being generally or surreptitiously published in a way to make them free to the public; for if any telegraph company or other person is permitted to promptly acquire said quotations surreptitiously or by theft, and without paying your orator therefor, the telegraph companies contracting with your orator for said quotations and agreeing to pay your orator therefor, will be put at such
7 a disadvantage in competition with such telegraph companies or persons acquiring the same surreptitiously and without paying your orator therefor, as to prevent said contracting telegraph companies from long continuing to purchase said quotations from your orator.

IV. That the manner of collecting and distributing said quotations is as follows:

Experienced persons in the employ of your orator are placed in each of the different parts of the exchange hall of your orator where the buying and selling of the different commodities are taking place, these parts being commonly known as "pits", whose duly it is to at once mark on paper every fluctuation in the market prices of the commodity dealt in in such pit, and to immediately transmit said written prices by mesengers (also in the employ of your orator) to a telegraph operator on the said exchange floor, who at once transmits them by means of an electrical instrument called "transmitter" over telegraph wires,

owned and operated by a telegraph company, which are connected with said transmitter and run thence to the various offices and places of business of persons in the city of Chicago who desire and are willing to pay said telegraph companies for such quotations—each of such wires being connected in said office with an electrical instrument of said telegraph company the known as a "ticker" by means of which quotations which are thus electrically transmitted over said wires to said ticker are automatically and immediately printed upon an automatically unrolling roll of paper called "tape" so that customers of said telegraph company can read the same on said tape within less than fifteen seconds after such prices are made upon such exchange, and said quotations can be and are as hereinafter stated, transmitted by telegraph companies to persons outside of the City of Chicago, in a similar manner, except that they are required to be, and are almost instantaneously re-
8 transmitted over the telegraph wires of the telegraph company by means of a telegraphic instrument known as the "Morse" instrument; this re-transmission being necessary when it is desired to retransmit said quotations any considerable distance, and by the method here indicated, the continuous quotations of your orator can be conveyed to persons all over the United States and in all the cities and towns thereof, within twenty seconds after said prices are made in said transactions on the said exchange of your orator; and that the yearly expense to your orator of collecting said quotations as aforesaid, is more than $7000.00.

V. That for two years prior to June fist, 1892, your orator did not allow anyone to collect, receive, or distribute such quotations, nor did it itself collect or furnish said quotations to any person whatsoever, but that after said last mentioned date, your orator desiring to give, for a time at least, the public the benefit of its said quotations, by written licenses permitted the Western Union Telegraph Company and the Postal Telegraph Cable Company (both engaged in doing a general telegraph business throughout the United States and corporations organized under the laws of the State of New York) to gather such quotations through their own employes, upon said Exchange floor, and to sell and distribute the same to their customers, (which they did at the prices above named) without paying your orator therefor; but your orator is informed and believes that said telegraph companies soon proceeded to sell or distribute said quotations to all persons desiring the same without discriminating between those who desired them for legitimate purposes, and those desiring them for illegal purpose, and that by reason thereof, many persons purchased said quotations from

said telegraph companies for the purpose of using the same in conducting the business of gambling or betting upon the fluctuations of prices on the Exchange of your orator of com-
9 modities dealt in on such Exchange such business consisting of making so-called contracts, or trades with customers, wherein neither party thereto contemplate the delivery of the commodities mentioned in said contract, but both parties thereto contemplate and intend that said so-called contracts or trades shall be adjusted with reference to the public market quotations of the prices made on the Exchange of your orator, and wherein said parties contemplate that said so-called contracts or trades shall terminate and be closed out when said market quotations of the prices on such Exchange shall reach a certain figure, or shall exhaust a certain deposited margin usually a small one; said places of business being popularly known as bucket shops, and being in reality, conducted for the purpose of betting or gambling on the prices of commodities dealt in on said Exchange, as disclosed by said continuous market quotations of your orator, and that those of such bucket shops whose transactions have reference—as most of them do—to the commodities dealt in on the Exchange of your orator cannot exist or conduct business without receiving the continuous market quotations of prices on the Exchange of your orator, and other similar exchanges, and that, as your orator avers, the conducting of a so-called bucket shop is contrary to the laws of the State of Missouri and the State of Illinois, and your orator avers that by reason of the failure and unwillingness of said two telegraph companies to discriminate, as they ought to have done, between legitimate trade and so called bucket shops, in the sale and distribution of said quotations of your orator this bucket shop evil has assumed such large proportions and has become so serious as to materially affect legitimate business speculation and other transactions on the exchange of your orator, and to bring into discredit your orator and its members in the minds of many people who ignorantly suppose from said use of your orator's said quotations,
10 as a basis of said bets that said bucket shops are in some way connected with your orator—said erroneous belief being also superinduced by the fact that the pretended contracts which most of said bucket shops make, pretend that deliveries thereunder are to be made in accordance with the rules and regulations of your orator, and thereby many of said customers are ignorantly led to believe that they are dealing with members of your orator, and that their contracts are to be, and are in fact, executed upon your orator's exchange and with its members, and when losses are incurred by such persons in such bucket shops, either from the adverse fluctuations of said market prices, or from the dishonesty of the persons conduct-

ing said bucket shops, such customers erroneously believe that they have suffered through the dishonesty of members of your orator, and that in some way, your orator and its members are responsible therefore, whereby the good name and reputation for business integrity of your orator and its members became and are impaired and said members were and are deprived of many customers and large sums of money in emoluments and commissions which would otherwise come to them but for the discredit cast upon your orator and its members through the existence and operation of said bucket shops as aforesaid, and the erroneous impressions created as aforesaid in the public mind as to their connection with your orator, by reason whereof, your orator became and was embarassed and hindered in fulfilling and carrying out the objects for which it was organized, and particularly from increasing the number of its members and thereby more intensively inculcating the principals of justice and equity in trade, and procuring to its members the full benefits of co-operation in the furtherance of their legitimate pursuits, and by reason of the premises aforesaid, your orator found it necessary to and did, on June 1st, 1900, by due notice, terminate said written license to said two telegraph companies

and soon thereafter your orator found it necessary to and
11 did, adopt certain reasonable regulations calculated to
prevent the sale and distribution by telegraph companies of said quotations to persons conducting so-called bucket shops and other illegal business, and to derive from the sale of its quotations sufficient funds with which to take steps, legal and otherwise, to suppress such of said bucket shops as run upon, and use in their business your orator's quotations, and to attain this end, your orator formulated certain regulations in the form of a written contract to be signed by each telegraph company receiving and distributing said quotations, in and by which said contract, such telegraph company was required to agree not to knowingly give or sell such quotations to any so called bucket shop, or to any other telegraph company, and also to pay your orator therefor.

That the said Western Union Telegraph Company and said Postal Telegraph Cable Company refused to sign said contract, and being notified by your orator in writing that unless they did sign such contract before August 1st, 1900, they would not thereafter be given, or be allowed to take, such quotations, they in turn notified their customers that they would discontinue furnishing such quotations after August 1st, as aforesaid, by reason whereof, neither of said two telegraph companies were, after August 1st, 1900, and before April 1st, 1901, entitled of right to receive or distribute said market quotations of your orator.

VI. That on to wit; the first day of April, 1901, your orator and said Western Union Telegraph Company and said Postal Telegraph Cable Company, entered into and executed the following agreement:

12 This Agreement, made this 15th day of April, 1901, between the Board of Trade of the City of Chicago, a corporation organized under the laws of the State of Illinois, party of the first part, and The Western Union Telegraph Company, a corporation organized under the laws of the State of New York, party of the second part, and The Postal Telegraph-Cable Company, a corporation organized under the laws of the state of New York, party of the third part.

Witnesseth: First. The said Board of Trade agrees to furnish, without discrimination or delay, to the said party of the second part, and said party of the third part, complete and continuous quotations of prices made in transactions between members of said Board of Trade in its Exchange Hall. Such quotations shall be received by each of said telegraph companies at its office or offices in the city of Chicago, over a wire or wires to be furnished by the said telegraph company, connecting its office or offices with Morse telegraph wire or wires in the exchange building of the said party of the first part, which shall run to and be connected with the Morse telegraph transmitting instrument upon the floor of said exchange; such transmitting instrument to be the only instrument by which such quotations are to be transmitted from the said exchange hall. Said market quotations shall be collected in the different parts of said exchange hall, and be brought to the Morse telegraph operator at said transmitting instrument with as much speed, efficiency and completeness as they were prior to June 22, 1900, collected by the said parties of the second and third parts and shall be transmitted by said operator with the same diligence, promptness and completeness as the same were prior to June 22, 1900, transmitted by the said parties of the second and third parts; the operator, Morse telegraph transmitting instrument and wires leading to the various telegraph companies, parties hereto, to be located at the wheat pit, and within reach of the wheat reporter, said operator to be satisfactory to
13 the telegraph companies. The said party of the first part agrees to employ or cause to be employed, without expense to the party of the second or of the third part, a sufficient number of competent persons for the purpose of collecting and transmitting the said quotations of sales upon said exchange hall, including the necessary force of messengers for carrying said quotations and reports to the transmitting operator, so that the parties of the second and third part shall obtain complete and continuous quotations

throughout all sessions of said Board of Trade of the prices at which commodities dealt in on said exchange are bought and sold. The party of the first part agrees that the intention of this clause is to insure that the delivery of its quotations to the parties of the second and third parts hereto shall be simultaneous with and in the same manner as their delivery to any other telegraph company or party to whom they may be furnished for distribution. And said Board of Trade further agrees that said telegraph companies may designate some person of good character and proper behavior to take from the blackboard in said exchange hall, as the same is posted there, all market and statistical information which is posted on said blackboard, and that such person shall have a permit to enter said exchange hall for that purpose.

Second. The said parties of the second and third parts agree that they will not knowingly furnish or sell, directly or indirectly, said continuous quotations to any person, firm or corporation conducting a bucket shop or other similar place, where such quotations are used as a basis for bets or other illegal contracts based upon the fluctuations of the prices of commodities dealt in on said Board of Trade; nor will they knowingly continue to furnish said continuous quotations to any person, firm or corporation, who shall re-transmit or furnish the same to any person, firm or corporation conducting such bucket-shop or other place; provided, however, that nothing in this contract shall be construed as imposing upon the said parties of the second and third parts the duty to investigate and determine the character of business con-
14 ducted by any person, firm or corporation, applying for or receiving such continuous quotations, but the procedure to be adopted for the purpose of determining whether any applicant for such continuous quotations, or any person, firm or corporation receiving said quotations, contemplates using them, or is using them for any of the prohibited purposes aforesaid, shall be as follows:

1. Every applicant for such continuous quotations shall sign in duplicate an application in writing as follows:
"To the ..... Telegraph Company:

We hereby apply to you for the continuous market quotations of the Chicago Board of Trade, and we represent and agree with you and with the Board of Trade of the City of Chicago, from which you, under contract, have acquired the right to distribute said quotations:

1. That our business is and shall be the business of .....and that we are not keeping or causing to be kept, and will not keep or cause to be kept any

bucket shop or any office, store or other place wherein is conducted or permitted the business of making or offering to make, contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of any grain, provisions or other commodity or property, wherein both parties thereto or the undersigned contemplate or intend that such contracts, agreements, trades or transactions shall be, or may be closed, adjusted or settled according or with reference to the public market quotations of prices made on any Board of Trade or Exchange upon which the commodities or securities referred to in said contracts, agreements, trades or transactions are dealt in, and without a bona fide transaction on such Board of Trade or exchange, or wherein both parties or the undersigned shall contemplate or intend that such contracts, agreements, trades or transactions shall be or may be deemed closed or terminated when the public market quotations of prices made on such Board of Trade or Exchange for the articles or securities named in said contracts, agreements, trades or transactions shall reach a certain figure; and we agree that we will not use or allow anyone else to use such quotations or any of them for any such purpose or in such bucket shop.

II. We further agree with you, and with the said Board of Trade of the City of Chicago, that said quotations are to only be received by us for our private and individual use, and that said quotations will be used only in our said business; and that we will not sell or communicate or otherwise give said continuous quotations to any news distributing company, or telegraph company, or other person or corporation, nor allow any person or corporation whatsoever to take, directly or indirectly, said continuous quotations from said office, or to make a wire connection with the instruments or wires in said office, over which we receive said quotations. But nothing herein shall preclude us from transmitting said quotations to any branch office of ours, nor to any of our correspondents, provided that before transmitting said continuous quotations to any such correspondent we first obtain in duplicate (one of which shall be at once delivered to said Board of Trade), an agreement signed by such correspondent in which said correspondent shall agree with you, and with said Board of Trade, to abide by and comply with Clauses I, II and III hereof. If the undersigned shall transmit, or permit to be transmitted said quotations to any person, firm or corporation, who shall not have first signed a correspondent's agreement as above provided, the undersigned hereby agrees that said Board of Trade may sue the person, firm or corporation, to whom said quotations are thus transmitted, to prevent the receipt

or use of said quotations by said person, firm or corporation, without making the undersigned a defendant thereto; pro-
or
vided the undersigned does not, in case of a partnership, all the members thereof do not, reside within the juris-
16 diction of the court in which said suit is brought. By "continuous quotations" in this clause II is meant quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes.

III. We further agree that a strict compliance with the above provisions is and shall be a condition precedent to our right to a continuance of said quotations; and agree if we shall violate either of the above provisions, then you shall have the right at once and without notice, to cut off and cease furnishing said quotations.

We further agree with you that you shall not be pecuniarily liable for the accuracy of the quotations which you may furnish under this application, nor for errors, delays or omissions in the service.

This application shall become a contract binding upon us when accepted by you."

One of such applications, so signed shall be by the telegraph company mentioned therein at once transmitted to the party of the first part at Chicago, which shall thereupon instigate such investigation as it deems proper to determine whether such applicant desires said quotations for said prohibited purposes. Such investigation shall in the case of applications made and delivered to the party of the first part, within thirty days after the date hereof, be completed within sixty days after the date hereof; and when so received after said thirty days, said investigation shall be completed within ten days after the such receipt of said application. If said party of
above
the first part shall not within the time specified notify said telegraph company at its office in Chicago that, for the reasons aforesaid, said application should not be granted, then said application shall be accepted and said telegraph company may thereupon furnish said applicant said quotations; but if within said time said party of the first part shall find upon investigation and shall notify said telegraph company
17 that said applicant wishes said quotations for any of said prohibited purposes, said telegraph company shall refuse to furnish said quotations upon said application. If
be
legal proceedings shall thereupon or thereafter commenced against said telegraph company on account of any

delay in receiving said quotations, or such refusal to furnish quotations, said proceedings shall be defended by the party of the first part, which shall, and hereby agrees to pay all counsel and attorney's fees, costs, charges, damages, fines, penalties and expenses which said telegraph company may be put to or may be made subject to on account of such delay or refusal; and for the purpose of securing the said telegraph company against any such loss, expenses or damages occasioned by such delay or refusal or such legal proceedings, the said telegraph companies shall at all times retain from the compensation hereafter provided the amount of such compensation for the period of six months; and to this end, the first payment provided for under this contract shall not be made until seven months after it shall go into effect, and if at any time either of the said telegraph companies shall be obliged to pay any costs, damages or expenses which shall not be refunded to it by said party of the first part on demand, then the said telegraph companies may pay from the said fund so retained the amount so paid by said telegraph company, and may then retain from the subsequently accruing instalments a sum sufficient to make good the amount so paid out from said fund for costs, damages or expenses.

2. If said Board of Trade shall at any time ascertain that any person, firm or corporation receiving said continuous quotations from the party of the second or third part, or from persons to whom either party of the second or third part furnishes said quotations, is using said quotations for the purpose of conducting the business of illegal gambling in any of the commodities dealt in on said Board of Trade, or is conducting a bucket shop as defined by the law of Illinois,
18 or is violating any of the agreements contained in said application or correspondent's agreement than said Board of Trade may (1) so inform said telegraph company so furnishing said quotations and tender to said telegraph company its bond, with a surety company, in good financial standing, as surety thereon, running to said telegraph company, and in such penal sum as shall be fixed by said telegraph company, conditioned to save said telegraph company harmless from all costs and damages, including attorney's fees, that may be incurred by said telegraph company by acting upon said information and thereon withholding said quotations from such person, firm or corporation. And thereupon said telegraph company shall at once cease to furnish said quotations to such person, firm or corporation, or if a correspondent, then to the person, firm or corporation whose correspondent he is; and in that event said Board of Trade shall, at its own expense, defend any suits brought against said telegraph company, by reason of its said conduct. Or if said Board of Trade shall

elect not to give such bond of indemnity then it (2) may at its own expense commence legal proceedings in a court of competent jurisdiction against such person, firm or corporation and said telegraph company to enforce this contract and determine whether such person, firm or corporation is using said quotations for such illegal purposes, or is using such quotations in conducting a bucket shop, or contrary to the terms of his, its or their agreement aforesaid; and in such suit said telegraph company shall enter its general appearance as defendant, and if in said suit or in any suit brought by any such person, firm or corporation against either or both of the telegraph companies, parties hereto, it shall be determined by injunctional order or final judgment or decree conclusive upon the parties to said suit against the right of such person, firm or corporation to have or use said quotations, then said quotation service to such person, firm or corporation, shall be discontinued by said party of the second or third part furnishing the same, and said Board of Trade shall indemnify
19 and save said party of the second or third part harmless against any loss, damage or expenses which may result to it by reason of said discontinuance of said service.

Third. It is further agreed by the said Board of Trade that it will cause to be kept quotation records showing the fluctuations throughout the day with the specific time of said fluctuations in the same manner as said quotations records have been heretofore kept, and that said parties of the second and third parts may at all times have access to said quotation records.

Fourth. The said parties of the second and third parts hereby agree to pay said Board of Trade for said quotations and other market news the sum of twenty-five hundred dollars per month, payable on or before the second day of each said succeeding month during which they shall receive quotations, provided that the first payment shall not be required to be made until seven months after the going into effect of this contract, in accordance with the provisions of clause two of this contract. The proportions of said amount which shall be contributed by each telegraph company to be agreed upon between themselves. Thirty days after the termination of this contract the amount of money withheld by the telegraph companies as a security fund aforesaid shall be paid by them to the party of the first part. Provided, that if there are then pending any suits or claims against either of said telegraph companies on account of its refusal to furnish or continue furnishing said quotations, then the parties of the second and third parts shall have the right to retain a sufficient amount of said fund to amply secure them against said suits and

claims, and on the final adjudication or settlement of said suits and claims, the amount withheld as security therefor shall be paid by the second and third parties to the party of the first part. But if said party of the first part shall give to
20 the parties of the second and third parts a good and sufficient bond ample to protect them against said pending suits and claims, including all costs, damages and expenses, signed by some surety company in good standing and satisfactory to the parties of the second and third parts, then said telegraph companies shall pay the balance of said fund to the first party.

Fifth. The said party of the first part shall designate to parties of the second and third parts some officer of said Board of Trade to whom said telegraph companies, or either of them, shall apply for the correction of any faulty or inefficient service in the gathering, reporting or transmission of said quotations; or for any necessary change in said service and to whom said telegraph companies, or either of them may refer in case of any dispute which may arise as to the correctness of said quotations, and to whom said telegraph companies, or either of them, may apply touching any incidental question arising on account of said quotation service.

Sixth. Said party of the first part agrees to use all reasonable efforts to protect its property right in said quotations against purloiners thereof, and said telegraph companies agree that they will join either with said party of the first part or other telegraph company having the right to distribute said quotations, or both, as plaintiff in any suit now pending or hereafter commenced, to protect said property right in said quotations from purloiners, provided that said telegraph companies shall be saved harmless by said party of the first part from any expense, costs, attorney's fees and damages incurred in or by reason of any such suit.

Seventh. Each of said parties of the second and third parts agrees that it will, whenever requested by said party of the first part, furnish to it a list of the persons who have discontinued said continuous quotations, to the end that said party of the first part [may at all times know the names of]
21 may at all times know the names, locations, and street addresses, of all persons, firms or corporations then receiving said continuous quotations.

Eighth. It is further agreed that said telegraph companies may furnish said quotations to any other telegraph company with which either of them now have or may hereafter have any operating contract or other arrangement, provided that every such telegraph company shall first sign a contract or

agreement, running to said party of the first part, to abide by and conform to clauses two, six, seven and ten of this agreement.

Ninth. And the said party of the first part hereby agrees that it has not entered into and will not enter into any contract or arrangement with any other person or company who has or may acquire the right to distribute said quotations, in which contract or arrangement the said party of the first part has agreed or shall agree to pass upon applications of persons applying for the quotation service in a shorter period than those above provided for in the second clause of this contract. And it is further agreed that in passing upon application for said quotation service presented by either of the second or third parties it will act without discrimination, as between said second or third parties, or as between either of them, and any other person or corporation sending in applications for its patrons. And whenever the said party of the first part shall have before it at the same time applications from the same person, firm or corporation presented through two or more persons, telegraph, telephone or ticker companies, if it approves any of said applications, it shall approve them all at the same time and shall notify at the same time all of said persons or companies through whom said applications were presented of such approval. This shall apply either when an application is approved affirmatively or by the failure
22 of the said party of the first part to act upon any application.

Whenever either party of the second or third parts shall obtain and deliver to the party of the first part an application for the quotation service from any person, firm or corporation, who at the time of making said application is receiving said quotations with the approval of said first party, then the party of the second or third parts may furnish said quotations on said application without waiting for an approval by the party of the first part as hereinbefore provided in other cases.

Tenth. The words "continuous quotations" wherever used in the second and seventh sections hereof, shall be construed to mean every service of quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes. Each of said telegraph companies agrees not to furnish said continuous quotations to any person, firm or corporation, except as provided in sections two and eight hereof, the only intent and purpose hereof, being to prevent the misuse of said quotations for said unlawful purposes, or in said unlawful business, and not to discriminate between persons desiring them for other than said prohibited purposes.

Eleventh. This agreement shall be in force for one year from the date hereof and thereafter until the first party shall give to said second party and third party, or said second party and third party shall give to said first party, sixty days written notice of its or their intention to terminate the same.

In witness whereof, the parties hereto have hereunto affixed their signatures and corporate seals, the day and year first above written.

BOARD OF TRADE OF THE CITY OF CHICAGO,

[Seal] By William S. Warren, President.

23 Attest: GEO. F. STONE, Secretary.

THE WESTERN UNION TELEGRAPH COMPANY,

[Seal] By Thos. F. Clark, Vice-President.

Attest: A. R. BREWER, Secretary.

POSTAL TELEGRAPH-CABLE COMPANY,

[Seal] By W. H. Baker, Vice-President and Gen'l Mg'r.

Attest: CHAS. P. BRUCH, Ass't Secretary.

24 VII. Your orator also executed on or about the 31st day of July, 1900, a contract with the Cleveland Telegraph Company, a corporation organized under the laws of West Virginia to do a general telegraph business, and the Milwaukee Telegraph Company, a corporation organized under the laws of Wisconsin, to do a like business, in each of which said contracts the telegraph company therein mentioned was authorized to receive said market quotations for certain consideration to be paid by it to your orator, and in which said telegraph company agreed that it would not knowingly furnish or sell, directly or indirectly, said quotations to any person, firm or corporation conducting a bucket shop or other similar place, nor would it knowingly continue to furnish said quotations to any person, firm or corporation who should re-transmit or furnish the same to any other person, firm or corporation conucting a bucket shop or other similar place; and that it would not directly or indirectly furnish said quotations to any other telegraph company, person, firm or corporation engaged in the business of distributing market news by telegraph or telephone, and said telegraph company also agreed that it would furnish said continuous quotations only to such of its customers as would sign a written agreement that said quotations were to be used only for the private use of said customer

in his or its business, and that he or it would not sell, communicate or otherwise give said quotations to any news distributing or telegraph company, or allow any person, firm or corporation whatever, to directly or indirectly take said quotations from said customer's office, and also reserving to said telegraph company the right to terminate said contract if such customer should violate the foregoing provision; and your orator avers that the only business of said Cleveland Telegraph Company is the distribution of said market quotations within the City of Chicago, and that the said Milwaukee Telegraph Company's business is confined to the telegraph business between the City of Chicago and the City of Milwaukee and state of Wisconsin, and that the said Milwaukee Telegraph Company sells said quotations only to persons residing in the City of Milwaukee. And your orator avers that no other telegraph company has sought or acquired the right to sell or distribute said quotations except certain subsidiary companies of said Western Union Telegraph Company, including said Gold and Stock Telegraph Company, which have signed agreements with your orator, as provided in Clause VIII of said contract with said two telegraph companies, but the only one of said subsidiary companies selling or distributing said quotations within said City of Kansas City in State of Missouri is said Gold and Stock Telegraph Company, which acts only as the agent of said Western Union Telegraph Company in so doing; but that your orator is willing to make like contracts with any telegraph company desiring to have and distribute said quotations.

VIII. That your orator is informed and believes, and therefore charges the fact to be, that no person, firm or corporation is receiving said market quotations from either of said Telegraph Companies without having first signed one of the agreements in writing, above set out in said contract with said Telegraph Companies, and that neither said Christie Grain and Stock Company nor said Christie has signed any application or contract as required by said contract with said Telegraph companies, nor have they or either of them, signed any correspondent's contract, as provided in said contract with said telegraph companies, by reason whereof no person receiving said quotations from either of said telegraph companies is of right entitled to transmit or furnish the same to either said Christie Grain and Stock Company or said Christie, nor is said Christie Grain and Stock Company or said Chrietie entitled to receive or use said market quotations of your orator.

IX. That your orator well hoped that said defendants Christie Grain and Stock Company and C. C.

Christie, would recognize and respect your orator's right of property in said quotations, as they ought to do, and would not either directly or indirectly, by connivance or otherwise, seek to impair or destroy your orator's said property in, or the value to it of, said quotations, by wrongfully or stealthfully acquiring the same, but that your orator is informed and believes, and therefore charges the fact to be, that said defendants are receiving in the City of Kansas City, without right and surreptitiously and by theft, or from persons who are so receiving the same, said continuous quotations of your orator, and are using and exposing the same to public view, as if they had acquired the right to do so by lawful purchase or contract with one of said telegraph companies, which neither of them has done.

X. That, as already stated, such unauthorized use of said quotations by said defendants, Christie Grain and Stock Company and C. C. Christie, without their being obliged to pay your orator anything therefor, is calculated to, and in time will, if not entirely stopped or prevented, destroy the value of your orator's said quotations, and no telegraph company will be able to pay your orator its price therefor and successfully meet in competition others who acquire said quotations surreptitiously, and without paying your orator's prices therefor. And that if even one person within the jurisdiction of this Court be allowed to secure such quotations without restrictions as to the use thereof, which your orator imposes as aforesaid, such persons can furnish them to all the "bucket shops" and other persons within the United States desiring them, and thus entirely defeat the efforts of your orator to prevent their use in bucket shops as a basis of their illegal bets and destroy your orator's right to realize money from the sale of said
27 quotations.

XI. That said Christie Grain and Stock Company has formally demanded of said Western Union Telegraph Company that it furnish said Christie Grain and Stock Company the said market quotations of your orator, and has notified said telegraph company that it would not sign the application required to be signed by customers, in and by said contract between your orator and said Western Union Telegraph Company above set out; and has demanded of said telegraph company that it furnish said market quotations without the signing by said Christie Grain and Stock Company of such an application, and insists to said Western Union Telegraph Company that it as a common carrier is obliged to furnish said quotations to said Christie Grain and Stock Company without the signing of said application, and has threatened said Telegraph Company that if it does not comply with its

demand, that said Christie Grain and Stock Company will take steps to compel it to do so; and your orator fears that by reason of said or like demands, claims and threats of said Christie Grain and Stock Company, the said Western Union Telegraph Company, or said Postal Telegraph Cable Company will be induced or forced to furnish said quotations to said Christie Grain and Stock Company, in violation of the said agreement between said telegraph companies and your orator, unless restrained therefrom by the injunction of this Court, whereby the value of, and the property right of your orator in, said market quotations will be impaired, destroyed and lost to your orator.

XII. That your orator is advised by its counsel that there exists no remedy at law adequate to protect your orator's right of property in said quotations against said efforts of said defendants to destroy the same, as actions at law for damages against each person getting the said quotations would be impracticable because giving rise to a multiplicity of suits and because the ascertainment of the exact or approximate
28 amount of money damages in each such action would be difficult if not impossible; and that hence, the only adequate jurisdiction for the protection of your orator's property in such quotations is that of a court of Chancery, and the only adequate remedy, a writ of injunction issuing therefrom permanently restraining the said defendants, Christie Grain and Stock Company, and said Christie, from using or distributing said quotations, or receiving the same from any person or telegraph company, and said telegraph companies, defendants hereto, are also restrained and enjoined from complying with said threats or demands of said Christie Grain and Stock Company, and from furnishing said quotations to either said Christie Grain and Stock Company or said Christie. And your Orator further avers that the amount involved and matters in dispute in the suit, exclusive of interest and costs, is much more than the sum of $2,000.00.

All of which acts and doings of said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises. In tender consideration of which and for as much as your orator is remediless in the premises at and by the strict rules of the Common Law, and is relievable only in a court of Equity where matters of this nature are properly cognizable and relievable. To the end therefore, that the said Christie Grain and Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph Cable Company and the Gold and Stock Telegraph Company, and the confederates of said Christie Grain and Stock Company and said Christie when discovered, may true,

direct and complete answers make to this bill of complaint, but not under oath (answers under oath being hereby waived); and that a writ or writs of injunction may immediately issue, and upon the final hearing hereof, be made perpetual, restraining said defendants, Christie Grain and Stock Company
29 and said C. C. Christie, and each of them, from receiving or surreptitiously acquiring, from any person or firm, receiving from said Western Union Telegraph Company or said Postal Telegraph Cable Company, said market quotations of your orator, and from using, selling or distributing the same, or giving or allowing the same to be given, to any other person; and restraining said Western Union Telegraph Company, Postal Telegraph Cable Company and said Gold and Stock Telegraph Company from entering into any contract with either said Christie Grain and Stock Company or said C. C. Christie, providing for the distribution to them or either of them, of said quotations, and from distributing or giving said quotations of your orator to [to] either said Christie Grain and Stock Company or said C. C. Christie, and that your orator may have such other and further relief in the premises as will fully protect your orator's right of property in said quotations, and as to your Honors shall seem meet.

May it please your Honors to grant unto your orator a provisional or preliminary injunction as above prayed and also the writ of subpoena of the United States directed to the said Christie Grain and Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph Cable Company, and the Gold and Stock Telegraph Company, commanding them on a day certain to appear and answer this bill and to abide by and perform such decree as may be entered by this court.

BOARD OF TRADE OF THE CITY OF CHICAGO,

Henry S. Robbins,
Of Counsel.

By Henry S. Robbins,
Its Solicitor.

30 United States of America,
Northern District of Illinois—ss.

George F. Stone, being first duly sworn, deposes and says that he is the Secretary of the Board of Trade of the City of Chicago, complainant in the foregoing bill of complaint, and is duly authorized to make this affidavit in its behalf; that he has read the foregoing bill of complaint and that the allegations of said bill are true of his own knowledge, except as to those things therein stated to be upon information and belief, and as to those allegations, he believes said bill to be true.

GEO. F. STONE.

Subscribed and sworn to before me, this 17th day of April, A. D. 1901.

[Seal.] HARRY R. TOBEY,
Notary Public in and for Cook County, State of Illinois.

31 Thereupon, on the same day, to-wit, on the 18th day of April, 1901, a writ of subpoena was issued in the above entitled cause, which writ, with the return of the marshal thereon endorsed was returned and filed on the 20th day of April, 1901, and is in words and figures as follows, to wit:

United States of America, Western Division of the Western District of Missouri—Sct.

The President of the United States of America, To Christie Grain and Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph-Cable Company and Gold and Stock Telegraph Company—Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, on the first Monday, of June next, at Kansas City, then and there to answer the bill of complaint of Board of Trade of the City of Chicago, a corporation and a citizen of the State of Illinois, filed against you on the 18th day of April, A. D. 1901; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 18th day of April, 1901. Issued at office, in Kansas City, in said District, under the seal of said court, the day year last aforesaid.

[Seal] ADELAIDE UTTER, Clerk.
Clerk of Said Circuit Court.

Mem: The defendants to enter their appearance in this suit in the clerk's office, on or before the day at which the writ is returnable, otherwise the bill may be taken for confesso. ADELAIDE UTTER, Clerk.

32 United States of America, Western Division of the Western District of Missouri—Sct.

I do hereby certify that I executed this writ by delivering a true copy of the same to C. C. Christie, President of the Christie Grain and Stock Company, and further executed this writ by delivering a true copy of the same [—] C. C. Christie; all done on the 18th day of April, 1901.

Also executed this writ on the Western Union Telegraph Company by delivering a true copy of the same, on the 19th day of April, 1901 (in the absence of the president from my district), to M. D. Wood, manager of said company, at the business office of said Western Union Telegraph Company. Also executed this writ on the Postal Telegraph Company by delivering a true copy of the same on the 19th day of April, 1901, in the absence of the president from my district, to A. B. Richards, manager of said company, at the business office of said Postal Telegraph Company, the said Richards being the person in charge of the business of said company. All done at Kansas City, in the western division of the western district of Missouri. Other defendant not found in my district.

E. R. DURHAM,
U. S. Marshal, Western District of Missouri.
By C. C. Colt, Deputy.

Thereupon, on the same day, to-wit, on the 18th day of April, 1901, the following order was filed and entered of record in the above entitled cause:

33 In the United States Circuit Court, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain and Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph-Cable Company, and Gold and Stock Telegraph Company, Defendants.

Order.

Complainant's bill of complaint having on this April 18th, 1901, been presented to the Court, the application for a temporary injunction is set down for hearing on May 3rd, 1901, at ten o'clock A. M.

(Signed) WILLIAM C. HOOK, Judge.

Thereafter, to-wit, on the 20th day of April, 1901, a certified copy of the above order was filed in the above entitled cause and on the back of said certified copy appears the following endorsement:

I do hereby certify that I executed this order by delivering a true copy of the same to C. C. Christie. Also executed this order on the Christie Grain and Stock Company by delivering a true copy of the same to C. C. Christie, president of the Christie Grain and Stock Company. All done on the 18th day of April, 1901. Also executed this order on the Western Union

Telegraph Company by delivering a true copy of the same on the 19th day of April, 1901 (in the absence of the president from my district), to M. D. Wood, manager of said Company, at the business office of said Western Union Telegraph Company, said Wood being the person in charge of the business of said Company

Also executed this order on the Postal Telegraph Company by delivering a true copy of the same on the 19th day
34 of April, 1901 (in the absence of the president from my district), to A. B. Richards, manager of said company, at the business office of said Postal Telegraph Company, the said Richards being the person in charge of the business of said Company.

All done at Kansas City, Western Division of the Western District of Missouri. Other defendant not found in my district.

E. R. DURHAM,
U. S. Marshal.
By C. C. Colt, Deputy.

Thereafter, to-wit, on the 30th day of April, 1901, the following entry of appearance was filed in the above entitled cause:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago, Complainant,
In Equity. vs. No. 2541.
Christie Grain and Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph & Cable Company, and Gold and Stock Telegraph Company, Defendants.

Appearance of Defendants, Western Union Telegraph Company and Gold and Stock Telegraph Company.

We hereby enter our appearance in the above entitled suit as solicitors for the above named defendants, Western Union Telegraph Company and Gold and Stock Telegraph Company.

KARNES, NEW, HALL & KRAUTHOFF,
Solicitors and counsel for defendants, Western Union Telegraph Company and Gold and Stock Telegraph Company.

35 Thereafter, to wit, on the 3rd day of May, 1901, the following answer was filed in the above entitled cause:

In the United States Circuit Court, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,

vs.

Christie Grain & Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph-Cable Company and Gold and Stock Telegraph Company, Defendants.

The Joint and Several Answer of Christie Grain & Stock Company and C. C. Christie, two of the Defendants, to the Bill of Complaint of said Complainant.

These defendants, now and at all times hereafter saving and reserving unto themselves and to each of them, all benefit and advantage of exception which can or may be had or taken to the manifest errors, uncertainties and other imperfections in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material and necessary for them to make answer unto, answering, say:

As to paragraph 1 in said bill of complaint contained, these defendants admit that said complainant is a private corporation organized under a special charter of the state of Illinois, granted on or about the 18th day of February, 1859; that the objects of the incorporation of said complainant company are as stated by said company in a preface to their rules and by-laws: "To maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and to disseminate valuable commercial and economic information; and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits;"
36 and admit that said complainant is given by its charter power to sue and be sued, to receive and hold property of all kinds, and dispose of the same, by sale or otherwise, and to make such rules, regulations and by-laws as it may in-think proper or necessary for the government of said corporation and its affairs, but deny that said complainant, has any right or authority under said charter to promote uniformity in the customs and usages of merchants who may not be members of said corporation, and deny that it has any power to interfere in any manner whatever with the customs and usages of merchants generally throughout the country; and deny that the said complainant has any right or authority under its charter, to inculcate principles of justice and equity in trade, or to interfere with trade in any manner whatever

in any transactions not conducted on the floor of the exchange room of said Board or connected with said Board of Trade; and deny that the said complainant can in any manner facilitate the speedy adjustment of business disputes relating to any matter or thing whatever not connected with the said Board of Trade and its members; and deny that said complainant has generally the right, under its charter, or in any other way, to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits, if such legitimate pursuits are to be designated and established by said Board of the
Trade contrary to law of the land or against the public policy of the state of Illinois, the state of Missouri, or the general government of the United States of America; and deny that the said complainant has any right or authority whatever by its charter to hold any property the whole of which shall exceed in value the sum of two hundred thousand dollars ($200,000.00); and deny that said complainant under its charter, has any right or authority to make such rules, regulations and by-laws as it may think proper or necessary for the government of said corporation and its affairs, if such by-
laws are contrary to law or against public policy; and
37 defendants allege that the said charter provides that the said corporation may "make such rules, regulations and by-laws from time to time as they may think proper or necessary for the government of the corporation hereby created, are not contrary to the laws of the land."

Defendants deny that the said complainant has power to admit such persons to be members and to expel such members, as it may see fit, but allege the fact to be that the said complainant has a right to admit such persons to be members as it may see fit and to expel any members for good and sufficient cause properly shown, under rules and by-laws that may be passed by it, which shall not in any way contravene the laws of the land, or the public policy of the state.

Defendants deny that the said complainant has the right under its charter, to carry on any business that is usually conducted by boards of trade or chambers of commerce, in manner and form as stated and set forth in said bill of complaint, and allege the fact to be that under said charter complainant "shall have no power or authority to do or carry on any business except such as is usual in the management of boards of trade or chambers of commerce, or as provided in the foregoing sections of this bill."

Defendants admit that the complainant has no right to conduct a telegraph business, and admit that the charter of the

said complainant company does not impose upon complainant the duty of furnishing to the public or to any person the knowledge or quotations of the prices made in transactions between its members within its exchange hall, but defendants allege the fact to be that the said Board of Trade of the City of Chicago was organized as such in said city years before it received from the Legislature of the State of Illinois a charter authorizing its incorporation and from the time that the corporation was organized it continued to hold and control a chamber of commerce in substantially the same manner that it had done
38 before the year 1859, and from the time of such incorporation the management of such chamber of commerce has changed and kept pace with the increase of business in the country, and for the purpose of benefitting its members and also the public generally, the said Board of Trade from time to time since its organization has in some manner sent out or allowed to be sent out, reports and statements of the market price of commodities dealt in on the floor of the exchange room of said board, so that the public for a large number of years, more than thirty, has had and been able to obtain and to know the market prices of such commodities; and as stated by the Supreme Court of the State of Illinois, which defendants allege to be true, the growth and progress of the association (Board of Trade of the City of Chicago), in commercial influence has been commensurate with that of the city in which it is located. The initiation fee for admission into it is $10,000 and it has some two thousand members. It maintains an exchange hall, upon the floors of which, between certain prescribed hours of each business day, the business of its members is transacted. It has been said, and with much show of reason, that the floors of this exchange hall stand in the gateway of commerce. The members of the Board meet thereon to buy and sell; their trade is by open viva voce bidding; and when a purchase and sale is made memoranda thereof are taken by both parties to the transaction. Four-fifths of the grain and provisions produced in the states and territories of the northwest are dealt in in this market, and the business there done is so vast in its proportions that it fixes the market prices of grain, bread stuffs and meats for the extensive territory that is tributary to Chicago, and seriously affects, and to a considerable extent, controls the values of the necessaries of life throughout the United States and the civilized world. For many years prior to August, 1883, the Board of Trade permitted the Western Union Telegraph Company by
39 its agents and servants in that behalf to occupy and use its exchange hall, and there collect and transmit, without any restriction whatever, reports of the dealings, fluctuations and changes of the market on the Board. This

information was sent by telegraph throughout the country, and delivered, without discrimination, to all persons who desired and would pay for the same. There were numerous customers of this commercial news department of the business of the telegraph company, and they were scattered over the land, wherever the business of buying and selling grain and provisions was followed. The Western Union Telegraph Company then had and still have, a lease upon and control of the Gold and Stock Telegraph Company, which latter corporation in turn, had and has a monopoly of the telegraph instruments known as "tickers". Telegraph circuits were established by the Western Union Telegraph Company in Chicago and other principal cities and by means of Morse instruments and these tickers, market information passed to every office and place of business connected by wire with one of these circuits, and was automatically registered so that every merchant or dealer provided with these instrumentalities, wherever his place of business might be, was instantaneously, and from minute to minute, and from hour to hour, during the business sessions of the Board of Trade, informed of all fluctuations and changes in the market prices of grain and other products as they occurred. That said Board of Trade was incorporated for the purpose of affording facilities to its members in doing business with each other. In their transactions upon the floor of the Exchange they deal as principals with each other, but in respect to the outside world, they are brokers and commission merchants for the producers, consumers, shippers and merchants whom they represent. For many years the Board has so used its franchises and its members have so conducted their business, as that it has become of vast commercial influence, and fixes the market values of grain and agricultural products for a large territory, and the fluctuations in prices upon its floors, powerfully affect the market prices of the necessaries of life throughout the country and the world. The great power and influence which the Board possesses in dictating market values are owing to the vast aggregation of products which are drawn to its portals for a market, and are bought and sold upon its floors, and which pay tribute and toll in the shape of commissions to its members. The great bulk of this business—though in form, and as between the members, the mere private and individual dealings of such members—is in reality the business of the numerous producers, consumers, merchants and shippers for and on behalf of whom these members deal. A potential factor in attracting this accumulation of business to the halls of the Exchange, and in vesting the Board with this power to regulate and determine the market prices of grain and provisions, is the fact that many years ago, (to wit, more than

thirty), the Board admitted and invited the telegraph companies, which are quasi public corporations, to the floors of the Exchange, and permitted and encouraged them to gather market quotations, showing the changes and fluctuations in the prices of the various products as they occurred, and send instantaneous information from the floors of the Board by means of telegraph lines and instruments, to all the principal towns and cities, and by means of ticker circuits to the places of business of all persons desirous of such information, which information was furnished to all persons and corporations, without discrimination, who were willing to receive and pay for the same. In this way the business of the country in buying and selling agricultural products has been brought under the control of the market values for such products as fixed and determined on the Board of Trade, (said complainant, and the business of dealing in such products has been brought to conform to the method of receiving instantaneous and continuous market reports, inaugurated, and for years persisted in, by the Board of Trade and the Telegraph Companies. This
41 market news is a species of property, and if the statistics with reference to the individual business of the members of the Association, and the aggregate business of its members, had from the start been gathered and compiled at the expense of its members, and for their sole use, it may be it would have been strictly private property held in trust by the Board for the use and benefit of such members, and wholly free from any public interest therein. But the Board, (said complainant), did not so exercise its franchises and so conduct its business, but admitted the Telegraph Companies to the floor of its Exchange, and permitted and encouraged them from day to day and year after year, to gather these statistics of the dealings on the Board of Trade, and telegraph them, immediately as they were made, throughout the land, to whomsoever would pay for such information, until the business of the country had adapted itself to these means and appliances, and the point was reached when the quotations upon the board were puissant to determine the market values of the products of the country, and all persons dealing in such products could not, without the knowledge and benefit of these immediate quotations, intelligently and safely so deal. The facts that the Board of Trade is a private corporation, and that the dealings between its members are private business, such as is transacted between dry goods, grocery and commission merchants, and that the statistics of these dealings, collected as stated, are private property, are not conclusive that such statistics are not charged with a public interest and that there is no duty due the public in respect thereto. Property becomes clothed with a public interest when used in a manner to

make it of public consequence, and affect the community at large; and when one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. That the market quotations and
42 reports have been so used by the complainant and by the telegraph companies with the knowledge and consent of the Board, as to become affected with a public interest, and are subject to such public regulation by the legislature and the courts as is necessary to prevent injury to such public interest. The interest is public and is necessarily, to all alike, common to all, and upon equal terms. The market information or reports, is and are not collected by the complainant merely for the use of the members of the complainant company. The complainant cannot, under the law and in justice and equity, so conduct its affairs for a long term of years as to create a standard market for agricultural products, and acting in concert or combination with the telegraph companies, build up a great system for the instantaneous and continuous indication of that market and its fluctuations, until the public and all persons dealing in such products conform their business to this system, and until, by the usage and custom or merchants, thus advanced by the methods adopted by the board and telegraph companies, such instantaneous market quotations become necessary to the successful and safe transaction of business, and until such system had become impressed and affected with a public interest, and then be allowed to discriminate between persons and parties, and say that one shall and another shall not have such information.

Defendants, further answering, allege the fact to be that the telegraph companies, and particularly the Western Union Telegraph Company, for a period of more than thirty years, as public carriers and distributors of news, have acquired information from the producers and consumers of the country as to the crop conditions of the country and the market prices of the necessaries of life throughout the world, and have caused this information to be carried and communicated to the Boad of Trade of the City of Chicago, in the first instance, and the Board of Trade has accepted and received the same; the
and the members of said Board of Trade having that
43 information so acquired have from, and during the whole time, acted as commission merchants for the producers and consumers of the country in selling and buying the commodities and productions of the country, and by selling and buying property which was not their own, but belonged to

the people, have fixed the market value and price of the necessaries of life to the people; and by so doing the prices so fixed have belonged not to the Board of Trade or its members, but have belonged to the producers and consumers of the commodities bought and sold in the manner aforesaid; and during the whole time as aforesaid, the public have been interested in such market prices fixed in that manner, and because of the fact that the said complainant has for the whole time aforesaid permitted its members to so act, and the information as to such market prices to be so gathered and disseminated to the public, everything that is or has been done upon the floor of the Exchange room of the said Board of Trade, and in so disseminating market information, was, from its inception, and continued to be to the end, coupled with a public interest; and no person or corporation has any right to withhold from the public information as to such transactions and prices; and such information is not now and never was a subject of barter and sale to the exclusion of the rights of the public therein.

That as to the second paragraph of said bill of complaint, the said defendants, answering, admit that the Western Union Telegraph Company and the Postal Telegraph-Cable Company, are engaged in conducting a general telegraph business, and the Gold and Stock Telegraph Company is a subsidiary one operated by the Western Union Telegraph Company for the distribution of market quotations and news, and admit that the said C. C. Christie is the president and manager of the said Christie Grain and Stock Company; but defendants expressly and positively deny that the said Christie Grain & Stock Company is or ever was engaged in the business of conducting a bucket shop or any other place wherein was or is conducted or permitted the pretended buying or selling of the shares of stock or bonds of any corporation or petroleum or cotton, grain, provisions or other produce in manner and form as stated and set forth in said bill of complaint; and deny that anything bought or sold by the last mentioned company is bought or sold, either on margins or otherwise, without any intention of receiving or paying for the property bought, or of delivering the property that may be sold; and deny that in any such place is conducted the business of making or offering to make contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of any commodities wherein both parties thereto, or said Christie Grain & Stock Company contemplates or intends that such contracts, agreements, trades or transactions shall be or may be closed, adjusted or settled according, or with

reference to the public market quotations of prices made on any board of trade, or exchange, upon which the commodities named in said contracts, agreements, trades or transactions are dealt in, or without a bona fide transaction on any board of trade or exchange, as stated and set forth in said bill of complaint, but allege the fact to be that the said Christie Grain & Stock Company is engaged in the business of buying and selling commodities on its own account, and acting as agent, commission man, or broker for others, in which purchase and sale and contracts therefor, the prices of such commodities, as fixed all over the country are considered by both parties in agreeing upon the value of such commodities at the time, and the prices fixed upon any board of trade or exchange are not used by either of the parties in fixing the contract price of the commodities so contracted for or bought and sold, but all taken together, and the conditions of the country with reference to such commodities are taken into account, and the parties so buying and selling or contracting have information, and all the information they can get from every source, each fixing the price at which he or it will buy and sell, also taking into consideration the condition of the money market of the country, the supply and demand of and for the commodities, and also taking into consideration all of the facts and circumstances known to any person, as furnishing a motive for his correct and legal business transactions of every kind from day to day.

And defendants deny that said Christie Grain & Stock Company keeps a place, or conducts a business wherein both parties, or either party contemplate or contemplates or intend or intends that any contract, agreement, trade or transaction shall be or may be deemed closed or terminated when the market quotations of prices made on any board of trade or exchange for the articles or commodities named in such contracts, agreements, trades or transactions shall reach a certain figure, as stated and set forth in said bill of complaint; and defendants in that regard allege the fact to be that the said Christie Grain and Stock Company conducts a business in the city of Kansas City and in the state of Missouri, in accordance with the laws of said state, and in accordance with the laws of the United States, and in conducting that business acts practically and substantially in all purchases and sales, contracts for future delivery and the carrying out of such contracts, as to all commodities that are dealt in on the Board of Trade of the City of Chicago as do the members of the said Chicago Board of Trade in transacting their legitimate business on the floor of the Exchange room thereof; and the place kept by the said

Christie Grain and Stock Company and the facilities there furnished are also for the purpose of allowing all people who desire to come there, and in that place buy and sell commodities between themselves, and in that regard the said place so kept is like that kept by the Chicago Board of Trade, in which the members of said Board transact their legitimate busi-
46 ness of buying and selling commodities.

Defendants further answering, allege the fact to be that on the Board of Trade of the City of Chicago, a large amount of legitimate business is transacted and conducted as hereinbefore stated, but in the transactions on the said Board of Trade, there permitted by said Board, the said Board of Trade keeps a place and permits the members thereof to contract for the purchase and sale of a thousand times more commodities than are produced in the country, without any expectation or intention of delivering the property sold or contracted to be sold, and without any intention of ever paying for the same, but with the intention of never to deliver and never to pay for said commodities; but to ring up the trades, and to settle the differences in the market price or to settle the differences in accordance with the price arbitrarily fixed by the Board of Trade, or under its authority, when the market prices reach a certain figure, through the clearing house of said board of trade, in accordance with the rules and regulations of said Board, which rules and regulations in that regard fix and establish the transactions as bucket shop transactions, and which bucket-shop transactions are contrary to the law of the state of Illinois, and also to the law of the state of Missouri; and the said Board of Trade of the City of Chicago keeps a place wherein is permitted by said Board and conducted by the members thereof, the pretended buying and selling of grain provisions and produce on margins, and in some cases without margins, without any intention on the part of said members of receiving and paying for the property so bought, or of delivering the property so sold as aforesaid; and the said Board of Trade also keeps a place and permits by its members the pretended buying and selling of commodities as aforesaid, and of offering to buy and sell the same; but the said members so conducting such transactions do not intend actually
47 to receive the same, if purchased, or to deliver the same, if sold; and the said Board of Trade of the City of Chicago also keeps a place wherein is permitted to be conducted by its members the business of making or offering to make contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of grain and provisions, wherein both parties thereto contemplate and intend that such contracts, agreements, trades and transactions shall be

or may be closed, adjusted, or settled according or with reference to the public market quotations of prices made on a Board of Trade, upon which the commodities referred to in the said contracts, agreements, trades or transactions are dealt in and without a bona fide transaction on said Board of Trade; and in aid of this business, and in furthering this class of transactions, the said Board of Trade conducts a clearing house for the purpose of facilitating the cancellation of these transactions and settling the differences between the parties thereto, and the buying and selling side of such transactions without any deliveries of the commodities contracted for; and by such system strikes a balance between the parties to such transactions, and causes said clearing house to send its own checks for differences between the contracting parties to such one as the other may be indebted, and demanding checks from the debtor for such balances for the amount that he owes to the other, and thereby ending and terminating such contracts between the members of said Board, without any act or thing done toward carrying out the same, but with everything done for the purpose of fixing the fact that the contracts were made without the intention of ever delivering the commodity contracted for, and compelling the debtor party to such contract to pay to the other the amount that shall be established as the difference in market price to be paid in such transactions; that to show more clearly what the Board of Trade permits, the said Board has adopted and requires its members to to

48 live up and perform their transactions in accordance with rules and by-laws as follows, namely:

"In case it shall appear that the delivery of an outstanding trade or contract between members of the Association may be off-set by some other corresponding trade or contract, made by the parties with other members of the Association, and the parties to such trade or contract, or their authorized agents, consent to such offset, such trade or contract shall be deemed to have been settled, and any balance between the current market value of the property covered by such trade or contract, and the several contract prices, shall be due and payable immediately by the party from whom such balance may be due to the party entitled to receive the same, under his contract. The current market value of the property contracted for shall be conspicuously posted, at a stated hour each day, under the direction of the board of directors, in the Exchange hall, and in the settlement room of the Board, which posting shall serve as a basis for the adjustment of all contracts settled, as herein provided, on that day.

In order to facilitate the operation of this section, each member is required to keep a settlement book, in which shall be

entered the names of parties with whom settlements have been made, and the dates and terms of the trades included in such settlements, and the terms of such settlements, and the prices at which the commodities were originally sold or purchased, and the amounts due to or from him or them on each separate settlement, also the net amount due to or from him or them on all settlements; and the Board of Directors is hereby authoried to provide a suitable office, with the necessary employes, to which members shall be required, at stated hours each day, to make reports, showing the net balance due to or from each member, as shown by such settlement book, and also the general balance due to or from him or them upon all such settlements; each report to be accompanied with an acceptable check for the aggregate of balances, if any, due from him or them on the contracts so settled; whereupon, if said report is found to be correct, as compared with other reports rendered him, the person in charge of said office shall, at a stated hour each day, pay to each of the parties making such reports, any balances which he may have collected, and which shall appear to be due to them by said reports, less such charges as shall be prescribed by the Board of Directors as compensation for the services of said office.

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It shall be the duty of each member or firm making a transaction for future delivery of grain or flaxseed in 5,000 or 1,000 bushel lots, lard and pork in 250 or 50 package lots, and D. S. short ribs and D. S. extra short clears in lots of 50,000 or 25,000 pounds, under the rules of the Association, to confirm such transaction by sending to the clearing house a memorandum of the same by six o'clock P. M. of the day on which it is made; such memorandum shall be in writing, and shall state on its face the date of the transaction, the quantity and kind of property covered by the same, the month of delivery, the price and the name of the party to whom sold, or of whom bought, and shall be signed by the party or firm making the same. All transactions of the same date, made with any member or firm may be included in one memorandum and all such memoranda shall be sent to the clearing house by the member or firm making the same, in unsealed envelope, addressed to the member or firm with whom such transactions were made. It shall be the duty of the clearing house manager to assort and have ready for delivery by 8 o'clock A. M. of the following day, and to deliver, on application, all envelopes containing such memoranda as are left with him in compliance with this section. In order to enforce this section, it is hereby provided that any member or firm failing to comply with its provisions shall be fined $5 for each offense, and for repeated offenses they may be disciplined by the directors under the provisions of section 9 of rule IV.

50 It shall be the duty of each member or firm making an offset of any outstanding contract for future delivery, to confirm the same by sending to the clearing house a memorandum of the same by 6 o'clock P. M. of the day on which it is made; such memorandum shall be in writing and shall state on its face the date of the offset, and the amount proposed to be paid or collected. When several offsets have been made on any one day, the memorandum shall state the net amount only of the proposed payments or collections; such memoranda shall be sent to the clearing house by the member or firm making the same in unsealed envelopes addressed to the member or firm to whom such transactions were made. It hall be the duty of the clearing house manager to assort and have ready for delivery by 8 o'clock A. M. of the following day, and to deliver on application, all envelopes containing such memoranda, as are left with him in compliance with this section. In order to enforce this section, it is hereby provided that any member or firm failing to comply with its provisions, shall be fined $5 for each offense, and for repeated offenses they may be disciplined by the directors under the provisions of section 9 of rule IV.

In case any member of this association acting as a commission merchant, shall have made a purchase or sale by order and for account of another, whether the party for whom any such purchase or sales was made be a member of this association or not said member shall be deemed authorized to settle such contract through the Exchange Clearing House of this Association, and under the rules and regulations relating to such clearing house and the board of directors of this Association are authorized to establish rules and regulations governing the Exchange clearing house of this association, and to change, add to or modify such rules and regulations from time to time. In case any member of this association, acting

51 as a commission merchant, shall have made purchases or sales by order and for account of another, whether the party for whom such purchase or sale was made be a member of this association or not, such order shall be deemed to have been made with reference to, and be executed and carried out in all respects under the rules, regulations and customs of this association, (including the Exchange clearing house regulations), the same as though they were in terms incorporated into such order; provided, that in case substitution of one contract for another, or of offsets or settlements of contracts, in pursuance of such rules, regulations or customs, the member or firm making the same shall be held to guarantee to his or their principal the ultimate fulfillment of the original contract made under such order, and the principal also con-

tinuing liable on such original contract, the same as though no substitution, offset or settlement were made.

In case any property contracted for future delivery is not delivered at maturity of contract, the purchaser may, if he shall so elect, consider the contract forfeited; or he may purchase the property on the market for account of the seller, by 1:15 o'clock of the next business day, notifying him at once of such purchase; or he may require a settlement with the seller at the average market price on the day of maturity of contract, and any damages or loss due to the purchaser by reason of such purchase or declared settlement, shall be due and payable by the seller immediately.

All deliveries of grain and flaxseed in 1,000 and 5,000 bushel lots; of mess pork, lard or s. p. hams in 50 and 250 package lots; or of meats in lots of 25,000 and 50,000 pounds in store, on time contracts, after 11 o'clock A. M., shall be made in the Exchange hall, or in such other place as may be designated by the board of directors, between the hours of 1:30 and
52 2 o'clock P. M., and shall be made by a notice in writing, which notice shall state on its face the place of business of its issuer. Such notice shall state in detail the warehouse receipts proposed to be delivered, and in the case of provisions in packages, or lard, the packers' brand, and the contract price on which delivery is proposed to be made, also the net cash value (deducting extra storage) of said property at the market price. At a stated hour each day it shall be the duty of the secretary to post or cause to be posted in a suitable place, the market price of such grain or provisions as are deliverable on time contracts. Such delivery notice may be passed from one purchaser to another, before 2 o'clock P. M., by endorsement thereon, by the seller, of the name of the party to whom it is to be delivered, together with the contract price at which the property is sold, and also the time at which the delivery is made. The first delivery of such notice shall be made before 1:35 o'clock P. M. and any party holding such notice longer than five minutes, as shown by the endorsements on same of the time of the previous delivery, shall not be permitted to deliver it. Any person endorsing upon said notices any fictitious name or the name of any person, firm or corporation other than that of the person, firm or corporation to whom he tenders the notice upon a bona fide sale of the property mentioned therein, actually made by himself or the firm or corporation he represents, or upon the written order of another member, firm or corporation, on whose behalf he makes such tender, or who shall make any alteration therein, or any substitution of property other than that originally named in the notice by the original issuer thereof,

shall be deemed guilty of gross fraud, and, if a member, he shall be suspended or expelled at the discretion of the board of directors, and if not a member, such person shall forever thereafter be excluded from the Exchange hall, delivery and settlement rooms of the association. All delivery notices
53 issued under this rule shall be consecutively numbered by the parties issuing them. Notice of readiness to deliver property as herein provided and all subsequent transfers of such notices, shall be deemed and held to be a valid and sufficient tender of the property on time contracts, under the rules of this Board of Trade, provided the [party] is actually delivered, or is shown to have been ready for delivery, in the manner and upon the terms herein provided. It shall be the duty of the party regularly holding such notice at 2 o'clock P. M. to present the same at the office of its issuer before 2:30 o'clock P. M. of the same day, together with a certified check on some Chicago Bank in good standing, or other satisfactory payment for the net amount due for the property represented by said notice at the market price; and upon tendering said notice, with payment, at the office of its issuer, the holder of said notice shall be entitled to receive the property represented by same. All differences due from or to parties to such delivery, shall be paid upon a basis of a full delivery and no more, and each purchaser receiving notice of delivery, shall be responsible to the seller from whom the notice was received for the difference between the price actually paid for the property and their contract price. In cases where the seller's contract price is less than the price actually paid for the property, such seller shall be responsible to the purchaser to whom he delivered the notice, for the difference. All such differences shall be due and payable immediately upon the delivery and payment for the actual property, it being the duty of such person transferring the delivery notice to ascertain what price was actually paid for the property.

On the first business day of each month all deliveries on time contracts of the kind of property mentioned in this section, if delivered before 11 o'clock A. M., shall be delivered in the Exchange hall, or such other place as may be designated by the board of directors between the hours of 8:30 and
54 9:15 o'clock A. M., in the same manner and under the same regulations except as hereinafter provided, as is specified for similar deliveries after 11 o'clock. The delivery notice shall be of the same form and character in all respects as that prescribed for deliveries between 1:30 and 2 o'clock, except that it shall state the net value (deducting extra storage) of the property at the closing market price on the last business day of the previous month, for the delivery on which the

property is tendered, which price shall be posted on the bulletin board of the settlement room, immediately after the close of the market. The first delivery of the notice shall not be later than 8:35 o'clock, and it shall be the duty of the party regularly holding such notice at 9:15 o'clock to present the same at the office of its issuer before 11 o'clock A. M. of the same day, together with a certified check on some Chicago bank, in good standing, or other satisfactory payment, for the net amount due for the property represented by said notice, as hereinbefore provided, and upon tendering said notice with payment at the office of the issuer, the holder of such notice shall be entitled to receive the property represented by the same.

All differences between the price paid for the property and any contract prices involved in its delivery, due to or from parties to such delivery, shall be adjusted and paid in the same manner with the same liabilities as in the case of delivery made under this section between 1:30 and 2 o'clock P. M. In case property represented by either of the delivery notices mentioned in this section is not called and paid for as herein provided, it may be held by the issuer of the notice, for and at the expense of storage, interest, insurance or other risk of the party whom it may concern, until 12 o'clock M. of the next business day, at which time it shall be sold in open market for account of whom it may concern; or it may be sold, if the notice was delivered before 9:15 o'clock A. M., at any time between 12:30 o'clock P. M. of that day and 12 o'clock M. of the next business day. If the notice was delivered between 1:30 and 2 o'clock P. M. it may be sold at any time between the beginning of trading hours and 12 o'clock M. of the next business day. The party holding the property shall, however, notify the party to whom he delivered the original delivery notice, before 2 o'clock of the same day, of the default, if the delivery notice was delivered before 9:15 o'clock A. M., or before 4 o'clock P. M., if the delivery notice was delivered between 1:30 o'clock and 2 o'clock P. M.—such notice of default to be in writing; and each purchaser receiving said notice of default, shall in turn deliver the same, without delay, to the party to whom he passed the original notice of proposed delivery. All expense and risk of carrying property, including a commission of one-quarter of one cent per bushel on grain, and one-quarter of one per cent on the market value of provisions, shall be payable to the party required to make re-sale, by the party to whom he had the property sold, he to be reimbursed by the one to whom he delivered the notice of delivery, and so on until it is finally paid by the party in default. And in case of such default and re-sale of property,

all differences shall be adjusted as hereinbefore provided on the basis of the price at which the property shall have been resold. All parties having property due them on time sales shall be present or shall be represented by an authorized employe, in the Exchange hall, or such other place as may be designated by the board of directors between the hours of 1:30 and 2: o'clock P. M. of each business day, and on days when the board adjourns at 12 o'clock M., between the hours of 12:15 and 12:45 o'clock P. M., and on the first business day of each month between the hours of 8:30 and 9:15 A. M.; and admission to the Exchange hall, or such other place as may be designated by the board of directors, shall be denied all parties after 1:30, 12:15 or 8:30 o'clock, as the case may
56 be. Any property which cannot be delivered, owing to the absence of the buyer from the Exchange hall, or such other place as the directors may have designated for the purpose of delivery, may be sold out by the party having same sold to such absentee, as hereinbefore provided in cases of default; all expenses and risk of carrying the property, commissions etc., shall be paid by the absentee, the same as in cases of default; provided, however, such property shall not be sold until the absentee has had notice in writing, either delivered to him in person, to his business representative, at his place of business, or left at the secretary's office in case he has no regular place of business, that the property was ready for delivery under this rule on his contract. In case it should appear on complaint duly made to the board of directors that any member has been guilty of issuing a notice of readiness to deliver property as herein provided, who had not the property mentioned in such notice in his control or possession at the time of issuing such notice, shall thereafter dispose of the property, except as herein provided, or who refuses to deliver up such property when demanded, as provided for under this rule, such party shall be deemed guilty of gross fraud, and shall be suspended or expelled from membership in this association, under the provisions of Rule IV.

Provided, however, that upon days when the board adjourns at 12 o'clock M. all deliveries herein provided to be made between the hours of 1:30 and 2 o'clock P. M. shall be made between the hours of 12:15 and 12:45 P. M., and upon such days the time for the first delivery of the notice in regard to such afternoon deliveries hereinbefore provided for shall be made before 12:30 P. M., and the time when the endorsement thereof shall cease, the time for the presentation of such notice at the office of its issuer and the time for payment for the property represented by such notice shall be one hour and fifteen minutes earlier than on other days in the year."

57 Defendants further answering, allege the fact to be that transactions so conducted on the floor of the exchange room of said Board of Trade by the members of and allowed by the said Chicago Board of Trade, in the manner in which they are conducted and permitted, are contrary to the law of the state of Illinois, which upon that subject is:

"That it shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept within this state, any bucket shop, office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins; or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold; and the keeping of all such places is hereby prohibited. And any corporation or person, whether acting individually or as a member or as an officer, agent or employe of any corporation, association or co-partnership, who shall be guilty of violating this section shall, upon conviction thereof, be fined in any sum not less than $200 and not more than $500; and any person or persons who shall be guilty of a second offense under this statute, in addition to the penalty above described, shall, upon conviction, be imprisoned in the county jail for the period of six months, and if a corporation, shall be liable to forfeiture of its charter. And the continuance of such establishment after first conviction shall be deemed a second offense."

"It shall not be necessary, in order to commit the of-
58 fense defined in section 1 of this act, that both the buyer and the seller shall agree to do any of the acts therein prohibited, but the same crime shall be complete against any corporation, association, co-partnership or person thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display, in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall be deemed an accessory, and, upon conviction thereof, shall be fined and punished the same as the principal, and as provided in section one of this act."

That such transactions are also contrary to the law of the state of Missouri, upon that subject, to wit: Section 2222 of the Revised Statutes of Missouri, 1899, page 620.

Defendants further allege that the said Board of Trade of the City of Chicago does now and has for a great number of years, constantly kept a place which is and has been the largest bucket shop in this country, and has and does permit the greatest evil of bucket shopping, so much complained of by the solicitor for the complainant in this case.

59 Defendants as to the third paragraph of said bill, answering admit that at the present time there are from 1800 to 2000 members of said complainant company; and admit that said complainant has provided in the city of Chicago, an exchange building which cost upwards of one million dollars; and upon information and belief allege the facts to be that such building and grounds upon which the same stands, are worth at the present time, more than two million dollars; and further allege the fact to be that the said complainant has no right or authority under its charter to hold property of any such value; that as to the costs of maintaining the building and conducting such exchange, these defendants do not know, and do not know about the yearly assessment upon the members of said board for the purpose of raising money to pay such expense; and will therefore neither admit nor deny the allegation of the bill in that regard, but pray for strict proof of those allegations in the bill upon the hearing of this cause. Defendants admit on information and belief that each membership is worth, to sell or exchange, the sum of about $2300 but expressly and positively denies that any person of good character and business integrity can become a member of said Board of Trade of the City of Chicago, upon application thereto, and paying its regular initiation fee, or by acquiring in lieu thereof, from a member the transfer of an existing membership as stated and set forth in said bill of complaint, and allege the fact to be that said Board of Trade has set itself up as being able to dictate as to what persons are persons of good character and of business integrity, and they have held that some of the best people in the country, for some reason, are not qualified to become members of said Board, and they have declined and will decline to admit any person to membership on said Board of Trade who is conducting a business in competition with the business of the members
60 of said Board, and who will not agree to transact all his business on the floor of the Exchange room of said Board of Trade.

Defendants admit that complainant has provided within said Exchange Building, for the exclusive use of its own mem-

bers an Exchange Hall, where many of its members meet every business day, between the hours of 9:30 A. M. and 1:15 P. M. except on Saturdays, when the market hours are from 9:30 A. M. until 12 M., to buy and sell for themselves and as brokers and commission men for their customers, for present and future delivery, all kinds of grain and hog products and that the value of said transactions aggregate many millions of bushels of grain and many millions of pounds of hog products annually, and admit that the business conducted on said Board of Trade has become so large and has been so large for a great number of years that said Exchange has become one of the great grain and provision markets in the United States and admit that some of such purchases and sales are permitted by said complainant to be made and are made only during said market hours and by open viva [voca] bidding, and allege the fact to be that many purchases and sales and contracts therefor, are made and executed by the members of said Board in said building without any viva voce or public bidding and defendants admit that the prices made on said Board of Trade by the transactions there conducted during the market hours upon said Exchange and the transactions by the members of said Board as hereinbefore stated and set forth have become a species of property of large value to said complainant, providing said complainant has any property therein, or any right by any means as a corporation and under its charter to receive or collect anything for such market reports as against the rights of the public therein, as hereinbefore stated and set forth, and defendants deny that the said complainant has any such interest in such market reports as entitles it to
61 sell or contract for the sale thereof, or to make any promises or arrangements with any person or persons whomsoever about such market reports, and deny that the said complainant has any right under its its charter or under law of the land to dictate in any way as to who shall not be permitted to receive such market reports or to fix the terms or price at which any person or persons may receive such reports.

Defendants further answering upon information and belief state the fact to be that at one time telegraph companies were willing to pay the said complainant large sums of money for the privilege of receiving instantaneously said quotations and selling the same to their customers, but whether at the present time any telegraph companies are so willing, these defendants have not sufficient information to either admit or deny that allegation in said bill and therefore would require complainant to make such proof thereof on the hearing of this cause, as it shall be advised is material or necessary. Defendants admit that many persons throughout the United States, who are engaged in the grain and provision business are willing to

pay and for many years have paid telegraph companies large sums of money for such market reports, and defendants allege the fact to be, upon information and belief, that never, up to within a year last past, did the Board of Trade attempt to charge anything for market reports and never attempted to collect or receive revenue of itself for such reports, and further in the same manner allege the fact to be that the said Board of Trade has no right or authority under its charter, to do or conduct any business for pecuniary profit. That there is no provision, either in the charter or in the by-laws rules and regulations of said Board of Trade for the distribution of pecuniary profit among its members, and there is no provision or power under which the said complainant has any right or authority to issue stock or to have stockholders, or to
62 declare dividends. That said corporation was not organized under law of the state of Illinois authorizing the organization of such a company for pecuniary profit.

Defendants further answering say, that they do not know except as they are informed by the allegations of said bill, what the present market price or prices which said telegraph companies are able to receive from their customers for the instantaneous and continuous quotations from said Board of Trade are, and therefore, they will require the complainant to make such proof in regard thereto on the hearing of this cause, as it shall be advised is material or necessary.

Defendants further answering, say that they do not know how much said complainant realizes from the sale of said quotations in the city of Chicago, and therefore can neither admit nor deny the allegation in said bill in that regard, but defendants allege the fact to be that said complainant has no right, power or authority as a corporation, to receive anything for such quotations in the City of Chicago, and again allege the fact to be that the said complainant has no right, power or authority to sell such quotations or market reports as against or to the exclusion of the rights of the public therein, and any sale or pretended sale made by said complainant of such quotations and market reports is absolutely void as against the rights of any person, persons or corporations who may be included as a member or members of the public; that if it be true, (which defendants deny) that the said Board of Trade has a right to control and sell said quotations and market reports, then the value of the same to said Board of Trade and complainant's ability to sell the same, would depend upon complainant's having or retaining the power to confine the transmission and distribution of said quotations to such telegraph companies and other distributing agencies as would contract therefor with complainant and upon terms which

the complainant might be able to dictate and the value
63 of said quotations of complainant will be much impaired if persons are allowed to receive or take without right or surreptitiously or by theft, or to use the same or distribute them to the public for use as stated in said bill but defendants deny that complainant has the right, power or authority to restrict the use of said quotations and market reports or to dictate in any manner as to the distribution thereof, and has no right or authority to dictate as to whom any telegraph companies may or may not serve, or what price should be charged for such service. Defendants deny that said quotations are such a species of property that the said complainants can now, in any way, under authority of law or right and justice, prevent the same from being generally published in a way to make them free to the public.

Defendants as to the fourth paragraph of said bill of complaint say that they are not sufficiently advised as to all of the matters in that paragraph stated, to either admit or deny the allegations of the bill in that regard, and will require the complainant, on the hearing of this cause, to make such proof thereto as it shall be advised is material or necessary.

As to the fifth paragraph in said bill of complaint, down to the statement therein that on the 1st day of April, 1901, the said complainant entered into a certain agreement with certain telegraph companies, these defendants, answering, say: that they have not sufficient knowledge upon the subject to even admit or deny the allegations in that paragraph contained, and will require said complainant, on the hearing of this cause, to make strict proof thereof, if the same be material or necessary in this case. That as to the part of said paragraph commencing with the statement that on the 1st day of April, 1901, the said complainant and said Western Union Telegraph Company and said Postal Telegraph Cable Company entered
into and executed an agreement, a copy of which is in
64 said paragraph contained, these defendants admit, upon information and belief, that such an agreement was made, executed and delivered, but defendants deny that such agreement was of any binding force or effect, either upon said complainant, or upon either of said telegraph companies, beyond fixing the fact that the said Board of Trade, by that agreement, sold all of its interest in said quotations and market reports at a price which the said telegraph companies agreed thereby to pay, even if the said Board of Trade had any interest in or power to sell such market reports and quotations, which the defendants here deny; that said agreement was null and void for the reason that it is contrary to law, and contrary to public policy and contains provisions absolutely ultra vires

as to the said complainant, and as to each of the telegraph companies named therein and the public. Defendants further allege the fact to be that ever since the year 1892, the Board of Trade has been attempting as hereinbefore stated, to foster and maintain in its members, a monopoly of all of the grain and provision business of the country, and especially that part of it usually styled "Commission business", and to that end, from the year last aforesaid, the said complainant has devised many means all of which, down to this last attempted, have been failures and because of the failure of all their schemes, the said complainant company, for the same purpose, namely, to foster and maintain a monopoly in its own members, compelled the telegraph companies, defendants named herein, to enter into such an agreement as that last mentioned; that such agreement was not entered into voluntarily, and upon motion of said defendants telegraph companies, but was absolutely brought about by the dictation of said complainant in refusing to do as the law requires, and to allow the market reports of prices of commodities to be sent to the public; that such act, on the part of the said complainant, is contrary to the law of the state of Missouri, applicable to pools,
65 trusts and conspiracies, and is section 8965 and 8966 of article one of chapter 143 of the Revised Statutes of 1899 of the state of Missouri; said section 8966 being as follows:

That from and after the passage of this article, all arrangements, contracts, agreements or combinations between persons or corporations, or between persons or any association of persons and corporations, designed or made with a view to lessen or which tend to lessen full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, and all arrangements, combinations, contracts, or agreements whereby or under the terms of which it is proposed stipulated, provided, agreed or understood that any person, association of persons or corporations doing business in this state shall deal in, sell or offer for sale in this state, any particular or specified article, product or commodity, and shall not, during the continuance or existence of any such arrangement, combination, contract or agreement, deal in, sell or offer for sale in this state, any competing article, product or commodity, are hereby declared to be against public policy, unlawful and void; and any person, association of persons, or corporation becoming a party to any such arrangement, contract, agreement or combination, shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to the penalties provided for in this article."

Said agreement and the matters therein provided for, and the effect thereof, violates the provisions of section 8978, article

two, of said chapter 43, of the revised statutes of 1899 of the state of Missouri, which said section 8978 is as follows, to wit:

"Every pool, trust, agreement, combination, confederation or understanding, conspiracy or combination entered
66 into or created, or organized by any corporation under the laws of this or any state, or any partnership or individual or other association of persons whatsoever with any other corporation, partnership, individual or any other person or association of persons to regulate, control or fix the price of any article or articles of manufacture, mechanism, merchandise, commodity, convenience or repair, or any product of mining of any kind or class, or any article or thing of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm or to maintain said price or prices when so regulated, determined or fixed, and all agreements combinations, confederations or conspiracies, or pools made, created, entered into or organized by any corporation, partnership, individual or association of individuals to fix the amount or limit the quality of any article or thing whatsoever, or of any article of manufacture, mechanism, commodity, convenience, or repair, or any product of any class, or kind of mining are hereby declared illegal. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of, or party to such pool, trust, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation, who is not a mem-
67 ber of or a party to such pool, trust, agreement, combination, confederation, association, or understanding, any such article or thing aforesaid, it shall be a violation of this article."

And these defendants further answering, allege and charge that the said agreement set up and pleaded by the complainant and entered into between it and the said telegraph companies, is absolutely null and void, and of no effect, for the reason and because the same is in direct violation of and in conflict with the Inter State Commerce Law of the United States, passed and adopted by the United States Congress on August 7th,

1888, and known and designated as Chapter 772, as amended, which reads as follows, to wit, and entitled: "An Act supplementary to the act of June 1st, 1862, entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes' and also of the Act of July Second, 1864, and of the acts amendatory of said first named Act," which said act reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds, or loan of credit, for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines, shall forthwith and henceforward by and through their own respective corporate officers and employes, maintain and operate, for railroad, governmental, commercial and all other purposes, telegraph lines, and exercise by themselves alone, all the telegraph fran-
68 chises conferred upon them and obligations assumed by as
them under the acts making the grants aforesaid.

Sec. 2. That whenever any telegraph company shall have accepted the provisions of title 65 of the revised statutes shall extend its line to any station or office of the telegraph line belonging to any one of said railroad or telegraph companies referred to in first section of this act, said telegraph company, so extending its line, shall have the right, and said railroad or telegraph company shall allow the line of said telegraph company so extending its line, to connect with the telegraph line of said railroad or telegraph company, to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company or corporation whatever, and shall receive, deliver and exchange business with connecting telegraph lines on equal terms, and affording equal facilities and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable.

Section 3. That if any person, railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph line, shall refuse or fail, in whole or in part, to maintain and operate a telegraph line as provided in this act, and acts, to which this is supplementary, for the use of the government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation or connecting telegraph company may apply for relief to the Inter State Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned, shall abide by and perform such order; and it shall be the duty of the Inter State Commerce Commission, when such determination and order are had, to notify the parties concerned, and if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States at the relation of either of said Inter State Commerce Commissioners: Provided, That the said Commissioners may institute any inquiry upon their own motion in the same manner and to the same effect as though complaint had been made.

Sec. 4. That in order to secure and preserve to the United States the full value and benefit of its liens, upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies, referred to in the first section of this act, and to have the same possessed used and operated in conformity with the provisions of this act, and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney General of the United States by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and other acts hereinbefore mentioned, and under all acts of Congress relating to such railroad and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever, claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled, which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company or corporation.

Sec. 5. That any officer or agent of said railroad or telegraph companies, or of any company operating the railroad, and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act, and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the government and public, equal facilities, or to secure to each of said connecting telegraph lines, equal advantages and facilities in the interchange of business as herein provided for, without any discrimination or whatever for, adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time, to order or orders of the Inter State Commerce Commission shall, in every such case of refusal or failure, be guilty of a misdemeanor and on conviction thereof, shall, in every such case, be fined in a sum not exceeding one thousand dollars; and may be imprisoned not less than six months; and in every such case of refusal or failure, the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company, whose officer or agent may be guilty thereof, in the Circuit or District Court of the United States, in any state or territory in which any portion of the road or telegraph lines of said company may be situated; and in case of suit, process may be served upon any agent of the company found in such state or territory, and such service shall be held by the courts good and sufficient.

71 Sec. 6. That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Inter State Commerce Commission, copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever, in reference to the ownership, possession, maintenance, control, use or upon or operation of any telegraph lines, or property over its right of way, and also a report describing with sufficient certainty, the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its rights of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter, to

report to the Inter State Commerce Commission with reasonable fullness and certainty, the nature, extent and value, and condition of the telegraph lines and property then belonging to it, the gross earnings and all expenses of maintenance use and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of report which said commission shall prescribe; and if any of such railroad or telegraph companies shall refuse to make such reports or any report, as may be called for by said commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars, to be recovered by the Attorney General of the United States; in the name and for the use and benefit of the United States; and it shall be the duty of the Inter State Commerce Commission, to inform the Attorney General of all such
72 cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures hereinbefore provided.

Section 7. That nothing in this act shall be construed to affect or impair the rights of Congress, at any time hereafter, to alter, amend or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment or repeal as in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude or impair any right, or remedy in the premises now existing in the United States, or any authority that the Postmaster General now has, under title 65, of the revised statutes, to fix rates, or, of the Government, to purchase lines, as provided for under said title, or to have its messages given precedence in transmission."

That the defendant telegraph companies and each of them, come within and are subject to the provisions of the act last aforesaid, and have accepted and adopted the same, and the said Board of Trade, by entering into said agreement also violates the said act and the provisions thereof.

Defendants as to the seventh paragraph of said bill of complaint, answering say: That they do not know whether on or about the 31st day of July, 1900, a contract with the Cleveland Telegraph Company was entered into as in that paragraph stated and set forth, and therefore can neither admit nor deny the allegations in that regard, and will require complainant on the hearing of this cause, to make such proof thereof as it shall be advised, if the same is material, necessary, proper or legal.

Defendants, in answer to the eighth paragraph of said bill, answering, say: That it may be true as therein stated, that no person, firm or corporation is receiving said market quotations from either of said defendant telegraph companies without having first signed one of the agreements in writing
73 above in said bill of complaint set out in said contract with said telegraph companies, and it is true that neither said Christie Grain & Stock Company nor said Christie has signed any application or contract, as required by said contract with said telegraph companies, and that neither of them signed any correspondents contract as provided in said contract with said telegraph companies, and defendants allege the fact to be that neither the said complainant nor either of said telegraph companies has any right, power or authority to insist upon any person or corporation signing such an agreement as a condition of his or their receiving such market reports, and using them in his or their business as they may see fit; and defendants deny that by reason of the matters set forth in section eight, no person receiving said quotations from either of said telegraph companies, is of right, entitled to re-transmit the same to either said Christie Grain & Stock Company or to said Christie, and deny that said Christie Grain & Stock Company or said Christie is not entitled to receive or use the said market quotations and reports and again allege the fact to be that the said market reports and quotations are coupled with a public interest and that any person or corporation who desires to receive them, has a perfect right thereto, and to use them as he or they may see fit, and in so doing if any criminal law has been violated then the person so violating that law is subject to prosecution under the criminal statutes of the state and is not subject to the prosecution, dictation, direction or control in any way of the Board of Trade of the City of Chicago.

These defendants further answering as to the ninth paragraph of said bill, answering, deny: That the defendants or any of them, or any or either of them is wrongfully, or stealthfully acquiring the said market reports or quotations and deny that either of them is receiving in the city of Kansas
74 City, without right, surreptitiously or by theft, or from persons who are so receiving the same, said continuous quotations and deny that either of said defendants is using or exposing the same, or any thereof acquired as aforesaid, to public view, as in said paragraph of said bill mentioned and set forth, but defendants admit that neither of them has made any contract with either of said telegraph companies and admit that neither of them is paying either of said telegraph companies anything therefor, and allege the fact to be that they

have paid nothing for said market reports for the reasons as hereinbefore stated.

Defendants as to the tenth paragraph of said bill answering deny: That any unauthorized use of said quotations by these defendants or either of them, without their being obliged to pay said complainant anything therefor, is calculated to or in time will, if not entirely stopped or prevented, destroy the value of such quotations and deny that no telegraph company will be able to pay complainant its price therefor, but allege the fact to be that said complainant and said defendant telegraph companies have and has no right, power or authority whatever, to enter into an agreement of any kind, nature or description, which shall prevent competition with others as to the collection and transmission of market reports. Defendants admit that if one person within the jurisdiction of this court be allowed to secure such quotations without restrictions as to the use thereof, which said complainant imposes as in said bill of complaint contained, such person can, if he will and so desires, furnish them to all the bucket shops and other persons within the United States desiring them, and thus entirely defeat the efforts of said complainant to prevent their use in bucket shops as the basis of their illegal business, as stated and set forth in said bill of complaint; but defendants deny that the said Board of Trade of the City of Chi-
75 cago, has any right, power or authority to prevent bucket shops using said market reports and quotations just as freely as the persons conducting bucket shops may use anything else that is public, providing they pay for obtaining such use; that the Board of Trade of the City of Chicago has no right to dictate what people violating any law have the right under any other law to receive as being members of the public, but whether that be so or not, defendants deny that they are or that either of them is conducting a bucket shop within the meaning of the law, and the meaning of the allegations of said bill of complaint; that as to whether the use of said market reports in bucket shops as the basis of their illegal business to destroy complainant's right to realize money from the sale of said quotations, these defendants cannot state, but they again allege the fact to be that the said Board of Trade has not now and never did have the exclusive right to use and to dissenminate the said market reports, nor to control or direct what shall or shall not be done with them, or who shall or shall not have access to them after they have passed into the hands of the public carriers of the country and been distributed by said public carriers throughout the country for the use and benefit of the public. And defendants further allege the fact to be that the said Western Union Telegraph Company and the said Postal Telegraph Cable Company now have, and have

been receiving for some time last past, the said continuous market reports and transmitting them by telegraph from the city of Chicago in the state of Illinois, to Kansas City in the state of Missouri, and have been delivering the same only to such parties as would sign the contract provided for in the agreement between the Board of Trade and the telegraph companies, set up in the orator's complaint, and are delivering them only to such parties as the Board of Trade directs
76 and orders them to deliver them to, and only when the Board of Trade shall order their delivery, and are also sending said quotations from the state of Illinois aforesaid, into the city of St. Louis in the State of Missouri, to such parties only as will sign contracts heretofore mentioned, and as shall be dictated and approved by the Board of Trade of Chicago. These defendants now state that said telegraph companies after receiving said public market quotations and news, onto their wires and public facilities, they are and then become and always have been, immediately impressed with a public trust, and with the right of the public thereto in the hands of the said telegraph companies, and that they cannot be permitted to enter into any arrangement or plan by which they will be or can be allowed to receive into their possession or onto their public facilities and telegraph wires, such public market quotations so as to deprive said market quotations and news of its public character, when coming into their possession as public carriers, using the facilities of the United States so as to discriminate or in any manner so as to justify it in refusing, after having received the same, and using the public facilities for its transmission to be held and retained as the private information of the Board of Trade of Chicago, or any other party or of any parties that might be designated by the Board of Trade, and when so receiving said market quotations cannot be permitted to be allowed to make the same thereafter, the subject of private contract either with the Board of Trade or with themselves, and that they cannot and ought not to be allowed under any arrangement whatever to use the public facilities and bring such public information and quotations into the state or elsewhere and be permitted to use them, so as to discriminate against the citizens of this state, and allow such parties to have and receive them, which the Board of Trade may direct, and refuse to allow other parties to have them upon proper terms and conditions, and that such is the effect of said contract, so made and entered into, and of
77 the transactions and acts of said companies in pursuance thereof.

These defendants as to the eleventh paragraph of said bill, answering admit: That the said Christie Grain & Stock Company has formally demanded of said Western Union Telegraph

Company (and also of the Postal Telegraph Cable Company) that it furnish said Christie Grain & Stock Company the said market quotations and has notified said telegraph company that it would not sign the application required to be signed, as stated in said bill, in and by said contract between said complainant and the Western Union Telegraph Company, as in said bill set forth, and has demanded of said telegraph company that it furnish said market quotations without the signing by said Christie Grain & Stock Company of such application, and admit that said Christie Grain & Stock Company insists to said Western Union Telegraph Company that it, as a common carrier, is obliged to furnish said quotations to said Christie Grain & Stock Company, without the signing of said application, and admit that said Christie Grain & Stock Company has threatened said telegraph company that if it does not comply with its demands, that said Christie Grain & Stock Company will take steps to compel it to do so; and defendants allege the fact to be that the said Christie Grain & Stock Company has a right, under the law of the land, to obtain from said common carriers, the said last mentioned two telegraph companies, said market reports, and neither of said telegraph companies has the right to refuse to furnish such market reports to the defendant the Christie Grain & Stock Company, upon the same terms that said telegraph company will furnish such reports to the public generally, and as they have been doing for years last past, and would do at the present time, were it not for the illegal contract entered into between said complainant and said telegraph companies as stated and
78 set forth in said bill of complaint; that because said contract is illegal and void, contrary to law and contrary to public policy, no excuse is furnished to either of said companies for not complying with the reasonable demand of said Christie Grain & Stock Company.

Defendants further answering deny that complainant is entitled to the relief or any part thereof prayed for in and by its said bill of complaint, and pray the same benefit of this answer as though they had demurred to the said bill for want of equity and for multifariousness in making three telegraph companies parties defendant, together with these defendants, when no contract exists between the complainant and these defendants and the matters about which any controversy can arise grows out of the contract between the complainant and the telegraph companies defendants, or had by plea in proper words set up the illegal effect of the contract between said complainant and said telegraph companies.

All of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable

Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

A. B. Jenks,
Of Counsel.

HARKLESS, O'GRADY & CRYSLER,
Attys. for answering defendants.

State of Missouri,
County of Jackson—ss.

Charles C. Christie, of said county and state, being first duly sworn, deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge except as to the matters and things which are therein stated to be on his and the
79 defendant's The Christie Grain & Stock Company's, information and belief, and as to these matters, he believes it to be true.

CHARLES C. CHRISTIE.

Subscribed and sworn to before me this 2nd day of May A. D. 1901.

My term expires January 25th 1902.

[Seal]

JOHN C. STEARNS,
Notary Public.

80 Thereafter, to wit, on the 10th day of May, 1901, the following entry of appearance was filed in the above entitled cause:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago, Complainant,
No. 2541. vs. In Equity.
Christie Grain & Stock Company et al., Defendants.

The Postal Telegraph-Cable Company, one of the defendants herein, enters its appearance in this cause.

GAGE, LADD & SMALL,
Solicitors for said defendant.

Thereafter, to wit, on the 15th day of May, 1901, complainant filed exceptions to the joint and several answer of defendants, Christie Grain & Stock Company and C. C. Christie.

81 Said exceptions are in words and figures as follows, to wit:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain & Stock Company et al., Defendants.

Exceptions taken by the complainant to the answer of the defendants, Christie Grain and Stock Company and C. C. Christie filed in this cause, on the 3rd day of May, 1901, for impertinence.

First Exception: For that the following allegation of said answer on page 16 thereof, immediately following the words "in accordance with the laws of the United States" is impertiment:

"And in conducting that business acts practically and substantially in all purchases and sales, contracts for future delivery and the carrying out of such contracts as to all commodities that are dealt in on the Board of Trade of the City of Chicago, as do the members of the said Chicago Board of Trade in transacting their legitimate business on the floor of the Exchange room thereof."

Second Exception. For that in the same paragraph of said answer the following passage is impertinent:

"And in that regard the said place so kept is like that kept by the Chicago Board of Trade, in which the members of said Board transact their legitimate business of buying and selling commodities."

Third Exception. For that the paragraph commencing on page 16, with the words "Defendants further answering,
82 allege the fact to be that on the Board of Trade of the City of Chicago, a large amount of legitimate business is transacted and conducted as hereinbefore stated", and ending on page 32 with the following words, "and the time when the endorsement thereof shall cease, the time for the presentation of such notice at the office of its issuer and the time for payment of the property represented by such notice shall be one hour and fifteen minutes earlier than on other days in the year" is impertinent.

Fourth Exception. For that the paragraph commencing on page 16 with the words, "Defendants further answering allege the fact to be that on the Board of Trade of the City of Chicago a large amount of legitimate business is transacted and conducted as hereinbefore stated" and ending with the following words on page 19 of said answer, "and compelling the debtor party to such contract to pay to the other the amount that shall

be established as the difference in market price to be paid in such transactions" is impertinent.

Fifth Exception. For that the paragraph of said answer commencing on page 19 with the words "that to show more clearly what the Board of Trade permits, the said Board of Trade has adopted and requires its members to live up to and perform their transactions in accordance with rules and by-laws, as follows, namely:" and ending with the following words on page 32 "and the time when the endorsement thereof shall cease, the time for the presentation of such notice at the officer of its issuer and the time for payment, for the property, represented by such notice, shall be one hour and fifteen minutes earlier than on other days in the year", is impertinent.

Sixth Exception. For that the passage of said answer commencing on page 32 thereof with the words "Defendants further answering allege the fact to be that the transactions so conducted on the floor of the Exchange room of said Board of Trade by the members of, and allowed by the said
83 Chicago Board of Trade, in the manner in which they are conducted and permitted, are contrary to the law of the state of Illinois" and ending on page 35 with the words "upon conviction thereof, shall be fined and punished the same as the principal, and as provided in section one of this Act," is impertinent.

Seventh Exception. For that the following passage on page 35 of said answer is impertinent:

"That such transactions are also contrary to the law of the state of Missouri, upon that subject, to wit: section 2222 of the Revised Statutes of Missouri, 1899, page 620."

Eighth Exception. For that the following paragraph on page 35 of said answer is impertinent:

"Defendants further allege that the said Board of Trade of the City of Chicago does now and has for a great number of years, constantly kept a place which is and has been the largest bucket shop in this country, and has and does permit the greatest evil of bucket-shopping, so much complained of by the solicitor for the complainant in this case".

In all which particulars this exceptant excepts to the said answer as impertinent; and humbly insists that the said impertinent matter ought to be expunged therefrom.

HENRY S. ROBBINS,
FRANK HAGERMAN,
For Complainant.

Thereafter, to wit, on the 3rd day of October, 1901, the following order was filed and entered of record in the above entitled cause:

84 In the United States Circuit Court, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
No. 2541. vs.
Christie Grain and Stock Company et al., Defendants.

Order.

This cause came on for hearing upon the complainant's exceptions to portions of the answer filed by Christie Grain and Stock Company and C. C. Christie, and the court having heard the arguments of counsel, and being fully advised in the premises, sustains the first, and second exceptions so filed, and also sustains the other exceptions to those parts of defendant's answer wherein it is alleged that complainant, in addition to its legitimate business conducts or affords facilities for the conduct of a bucket shop, and for transactions violative of the laws of the states of Illinois and Missouri. Leave is granted said defendants to file an amendment to its [—] within five days from this date, to which order defendants duly excepted.

October 3, 1901.
(Signed) WILLIAM C. HOOK, Judge.

Thereafter, to wit, on the 7th day of October, 1901, the joint and several amended answer of defendants, Christie Grain and Stock Company and C. C. Christie, was filed in the above entitled cause.

Said amended answer is in words and figures as follows, to wit:

85 In the United States Circuit Court, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain & Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph-Cable Company and Gold and Stock Telegraph Company, Defendants.

Amended Answer.

The joint and several amended answer of Christie Grain & Stock Company and C. C. Christie, two of the defendants, to the bill of complaint of said complainant.

These defendants, now and at all times hereafter saving and reserving unto themselves and to each of them, all benefit and advantage of exception which can or may be had or taken to the manifest errors, uncertainties and other imperfections in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material and necessary for them to make answer unto, answering, say:

As to paragraph 1 in said bill of complaint contained, these defendants admit that said complainant is a private corporation organized under a special charter of the state of Illinois, granted on or about the 18th day of February, 1859; that the objects of the incorporation of said complainant company are as stated by said company in a preface to their rules and by-laws: "To maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquare and to disseminate valuable commercial and economic information; and generally to secure to its members the benefits of co-operation in the
86 furtherance of their legitimate pursuits;" and admit that said complainant is given by its charter power to sue and be sued, to receive and hold property of all kinds, and dispose of the same, by sale or otherwise, and to make such rules, regulations and by-laws as it may think proper or necessary for the government of said corporation and its affairs, but deny that said complainant, has any right or authority under said charter to promote uniformity in the customs and usuages of merchants who may not be members of said corporation, and deny that it has any power to interfere in any manner whatever with the customs and usages of merchants generally throughout the country; and deny that the said complainant has any right or authority under its charter, to inculcate principles of justice and equity in trade, or to interfere with trade in any manner whatever in any transactions not conducted on the floor of the exchange room of said Board or connected with said Board of Trade; and deny that the said complainant can in any manner facilitate the speedy adjustment of business disputes relating to any matter or thing whatever not connected with the said Board of Trade and its members; and deny that said complainant has generally the right, under its charter, or in any other way, to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits, if such legitimate pursuits are to be designated and established by said Board of Trade contrary to law of the

land or against the public policy of the state of Illinois, the state of Missouri, or the general government of the United States of America; and deny that the said complainant has any right or authority whatever by its charter to hold any property the whole of which shall exceed in value the sum of two hundred thousand dollars ($200,000.00); and deny that said complainant under its charter, has any right or authority to make such rules, regulations and by-laws as it may think proper or necessary for the government of said corporation and its affairs,
if such by-laws are contrary to law or against public
87 policy; and defendants allege that the said charter provides that the said corporation may "make such rules, regulations and by-laws from time to time as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land."

Defendants deny that the said complainant has power to admit such persons to be members and to expel such members as it may see fit, but allege the fact to be that the said complainant has a right to admit such persons to be members as it may see fit and to expel any members for good and sufficient cause properly shown, under rules and by-laws that may be passed by it, which shall not in any way contravene the laws of the land, or the public policy of the state.

Defendants deny that the said complainant has the right under its charter, to carry on any business that is usually conducted by boards of trade or chambers of commerce, in manner and form as stated and set forth in said bill of complaint, and allege the fact to be that under said charter complainant "shall have no power or authority to do or carry on any business except such as is usual in the management of boards of trade or chambers of commerce, or as provided in the foregoing sections of this bill."

Defendants admit that the complainant has no right to conduct a telegraph business, and admit that the charter of said complainant company does not impose upon complainant the duty of furnishing to the public or to any person the knowledge or quotations of the prices made in transactions between its members within the exchange hall, but defendants allege the fact to be that the Board of Trade of the City of Chicago was organized as such in said city years before it received from the Legislature of the State of Illinois a charter authorizing its incorporation and from the time that the corporation was organized
it continued to hold and control a chamber of commerce
88 in substantially the same manner that it had done before the year 1859, and from the time of such incorporation the management of such chamber of commerce had changed and

kept pace with the increase of business in the country, and for the purpose of benefitting its members and also the public generally, the said Board of Trade from time to time since its organization has in some manner sent out or allowed to be sent out, reports and statements of the market price of commodities dealt in on the floor of the exchange room of said board, so that the public for a large number of years, more than thirty, has had and been able to obtain and to know the market prices of such commodities; and as stated by the Supreme Court of the State of Illinois, which defendants allege to be true, the growth and progress of the association (Board of Trade of the City of Chicago), in commercial influence has been commensurate with that of the city in which it is located. The initiation fee for admission into it is $10,000 and it has some two thousand members. It maintains an exchange hall, upon the floors of which, between certain prescribed hours of each business day, the business of its members is transacted. It has been said, and with much show of reason, that the floors of this exchange hall stand in the gateway of commerce. The members of the Board meet thereon to buy and sell; their trade is by open viva voce bidding; and when a purchase and sale is made memoranda thereof are taken by both parties to the transaction. Four-fifths of the grain and provisions produced in the states and territories of the northwest are dealt in in this market, and the business there done is so vast in its proportions that it fixes the market prices of grain, bread stuffs and meats for the extensive territory that is tributary to Chicago, and seriously affects, and to a considerable extent, controls the values of the necessaries of life throughout the United States and the civil-

ized world. For many years prior to August, 1883, the Board of Trade permitted the Western Union Telegraph Com-

89 pany by its agents and servants in that behalf to occupy and use its exchange hall, and there collect and transmit, without any restriction whatever, reports of the dealings, fluctuations and changes of the market on the Board. This information was sent by telegraph throughout the country, and delivered, without discrimination, to all persons who desired and would pay for the same. There were numerous customers of this commercial news department of the business of the telegraph company, and they were scattered over the land, wherever the business of buying and selling grain and provisions was followed. The Western Union Telegraph Company then had and still have, a lease upon and control of the Gold and Stock Telegraph Company, which latter corporation in turn, had and has a monopoly of the telegraph instruments known as "tickers." Telegraph circuits were established by the Western Union Telegraph Company in Chicago and other principal cities and by means of Morse instruments and these tickers, market

information passed to every office and place of business connected by wire with one of these circuits, and was automatically registered so that every merchant or dealer provided with these instrumentalities, wherever his place of business might be, was instantaneously, and from minute to minute, and from hour to hour, during the business sessions of the Board of Trade, informed of all fluctuations and changes in the market prices of grain and other products as they occurred. That said Board of Trade was incorporated for the purpose of affording facilities to its members in doing business with each other. In their transactions upon the floor of the Exchange they deal as principals with each other, but in respect to the outside world, they are brokers and commission merchants for the producers, consumers, shippers and merchants whom they represent. For many years the Board has so used its franchises and its members have so conducted their business, as that it has become of vast commercial influence, and fixes the market values of grain and agricultural products for a large territory, and the
90 fluctuations in prices upon its floors, powerfully affect the market prices of the necessaries of life throughout the country and the world. The great power and influence which the Board possesses in dictating market values are owing to the vast aggregation of products which are drawn to its portals for a market, and are bought and sold upon its floors, and which pay tribute and toll in the shape of commissions to its members. The great bulk of this business—though in form, and as between the members, the mere private and individual dealings of such members—is in reality the business of the numerous producers, consumers, merchants and shippers for and on behalf of whom these members deal. A potential factor in attracting this accumulation of business to the halls of the Exchange, and in vesting the Board with this power to regulate and determine the market prices of grain and provisions, is the fact that many years ago, (to wit, more than thirty), the Board admitted and invited the telegraph companies, which are quasi public corporations, to the floors of the Exchange, and permitted and encouraged them to gather market quotations, showing the changes and fluctuations in the prices of the various products as they occurred, and send instantaneous information from the floors of the Board by means of telegraph lines and instruments, to all the principal towns and cities, and by means of ticker circuits to the places of business of all persons desirous of such information, which information was furnished to all persons and corporations, without discrimination, who were willing to receive and pay for the same. In this way the business of the country in buying and selling agricultural products has been brought under the control of the market values for such products as fixed and determined on

the Board of Trade, (said complainant), and the business of dealing in such products has been brought to conform to the method of receiving instantaneous and continuous market reports, inaugurated, and for years persisted in, by the Board of Trade and the Telegraph Companies. This market
91 news is a species of property, and if the statistics with reference to the individual business of the members of the Association, and the aggregate business of its members, had from the start been gathered and compiled at the expense of its members, and for their sole use, it may be it would have been strictly private property held in trust by the Board for the use and benefit of such members, and wholly free from any public interest therein. But the Board, (said complainant), did not so exercise its franchises and so conduct its business, but admitted the Telegraph Companies to the floor of its Exchange, and permitted and encouraged them from day to day and year after year, to gather these statistics of the dealings on the Board of Trade, and telegraph them, immediately as they were made, throughout the land, to whomsoever would pay for such information, until the business of the country had adapted itself to these means and appliances, and the point was reached when the quotations upon the board were puissant to determine the market values of the products of the country, and all persons dealing in such products could not, without the knowledge and benefit of these immediate quotations, intelligently and safely so deal. The facts that the Board of Trade is a private corporation, and that the dealings between its members are private business, such as is transacted between dry goods, grocery and commission merchants, and that the statistics of these dealings, collected as stated, are private property, are not conclusive that such statistics are not charged with a public interest and that there is no duty due the public in respect thereto. Property becomes clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large; and when one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. That the market quo-
92 tations and reports have been so used by the complainant and by the telegraph companies with the knowledge and consent of the Board, as to become affected with a public interest, and are subject to such public regulation by the legislature and the courts as is necessary to prevent injury to such public interest. The interest is public and is necessarily, to all alike, common to all, and upon equal terms. The market information or reports, is and are not collected by the com-

plainant merely for the use of the members of the com plainant company. The complainant cannot, under the law and in justice and equity, so conduct its affairs for a long term of years as to create a standard market for agricultural products, and acting in concert or combination with the telegraph companies, build up a great system for the instantaneous and continuous indication of that market and its fluctuations, until the public and all persons dealing in such products conform their business to this system, and until, by the usage and custom of merchants, thus advanced by the methods adopted by the board and telegraph companies, such instantaneous market quotations become necessary to the successful and safe transaction of business, and until such system has become impressed and affected with a public interest, and then be allowed to discriminate between persons and parties, and say that one shall and another shall not have such information.

Defendants, further answering, allege the fact to be that the telegraph companies, and particularly the Western Union Telegraph Company, for a period of more than thirty years, as public carriers and distributors of news, have acquired information from the producers and consumers of the country as to the crop conditions of the country and the market prices of the necessaries of life throughout the world, and have caused this information to be carried and communicated to the Board of Trade of the City of Chicago, in the first instance, and the Board of Trade has accepted and received the same; and the

93 the members of said Board of Trade having that information so acquired have from, and during that whole time, acted as commission merchants for the producers and consumers of the country in selling and buying the commodities and productions of the country, and by selling and buying property which was not their own, but belonged to the people, have fixed the market value and price of the necessaries of life to the people; and by so doing the prices so fixed have belonged not to the Board of Trade or its members, but have belonged to the producers and consumers of the commodities bought and sold in the manner aforesaid; and during the whole time as aforesaid, the public have been interested in such market prices fixed in that manner, and because of the fact that the said complainant has for the whole time aforesaid permitted its members to so act, and the information as to such market prices to be so gathered and disseminated to the public, everything that is or has been done upon the floor of the Exchange room of said Board of Trade, and in so disseminating market information, was, from its inception, and continued to be to the end, coupled with a public interest, and no person or corporation has any

right to withhold from the public information as to such transactions and prices; and such information is not now and never was a subject of barter and sale to the exclusion of the rights of the public therein.

That as to the second paragraph of said bill of complaint, the said defendants, answering, admit that the Western Union Telegraph Company and the Postal Telegraph-Cable Company, are engaged in conducting a general telegraph business, and the Gold and Stock Telegraph Company is a subsidiary one operated by the Western Union Telegraph Company for the distribution of market quotations and news, and admit that the said C. C. Christie is the president and manager of the said Christie Grain and Stock Company; but defendants expressly and positively deny that the said Christie Grain & Stock
94 Company is or ever was engaged in the business of conducting a bucket shop or any other place wherein was or is conducted or permitted the pretended buying or selling of the shares of stock or bonds of any corporation or petroleum or cotton, grain, provisions or other produce in manner and form as stated and set forth in said bill of complaint; and deny that anything bought or sold by the last mentioned company is so bought or sold, either on margins or otherwise, without any intention of receiving or paying for the property bought, or of delivering the property that may be sold; and deny that in any such place is conducted the business of making or offering to make contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of any commodities wherein both parties thereto, or said Christie Grain & Stock Company contemplates or intends that such contracts, agreements, trades or transactions shall be or may be closed, adjusted or settled according, or with reference to the public market quotations of prices made on any board of trade, or exchange upon which the commodities named in said contracts, agreements, trades or transactions are dealt in, or without a bona fide transaction on any board of trade or exchange, as stated and set forth in said bill of complaint, but allege the fact to be that the said Christie Grain & Stock Company is engaged in the business of buying and selling commodities on its own [account], and acting as agent, commission man, or broker for others, in which purchase and sale and contracts therefor, the prices of such commodities, as fixed all over the country are considered by both parties in agreeing upon the value of such commodities at the time, and the prices fixed upon any board of trade or exchange are not used by either of the parties in fixing the contract price of the commodities so contracted for or bought and sold, but all taken together, and the conditions of the country with reference to such commodities are taken

into account, and the parties so buying and selling or
95 contracting have information, and all the information they can get from every source, each fixing the price at which he or it will buy and sell, also taking into consideration the condition of the money market of the country, the supply and demand of and for the commodities, and also taking into consideration all of the facts and circumstances known to any person, as furnishing a motive for his correct and legal business transactions of every kind from day to day.

And defendants deny that said Christie Grain & Stock Company keeps a place, or conducts a business wherein both parties or either party, contemplate or contemplates or intend or intends, that any contract, agreement, trade or transaction shall be or may be deemed closed or terminated when the market quotations of prices made on any board of trade or exchange for the articles or commodities named in such contracts, agreements, trades or transactions shall reach a certain figure, as stated and set forth in said bill of complaint; and defendants in that regard allege the fact to be that the said Christie Grain and Stock Company conducts a business in the city of Kansas City, and in the state Missouri, in accordance with the laws of said state, and in accordance with the laws of the United States, and the place kept by the said Christie Grain & Stock Company and the facilities there furnished are also for the purpose of allowing all people who desire to come there and in that place buy and sell commodities between themselves.

And defendants further answering, and by way of affirmative defense to the complainant's alleged cause of action, herein states that the complainant ought not to have or be permitted to have and maintain this action for the reason and cause that said complainant does not come into this court with clean hands in this:

That the alleged market quotations which the complainant is seeking by its complaint to enjoin these defendants
96 from using or having are quotations made by the complainant itself and caused and permitted to be made by it at a place, to wit: the Exchange Hall in the City of Chicago kept by complainant for the purpose of making quotations by its consent and connivance in violation of the laws of the state of Illinois, and of the state of Missouri, concerning bucket shopping; and that the quotations which complainant is seeking to prevent defendants from having, are quotations which are the result of transactions in the Exchange Hall kept by the complainant in the city of Chicago, which transactions at said place kept and permitted to be kept by complainant, are them-

selves transactions resulting in the quotations which defendants are charged of using which are themselves bucket shop transactions, and the result of bucket shop transactions carried on by the complainant and permitted to be carried on and encouraged and fostered by the complainant in violation of the laws of the state of Illinois and of the state of Missouri, and inasmuch as the complainant itself has been and is now engaged in fostering, protecting and engaging in deals and transactions and keeping a place in which others are permitted to engage in deals and transactions which are themselves bucket shop transactions, and which violate the laws of the state of Illinois and of Missouri, and which transactions result in market quotations which are the same market quotations that complainant is seeking to prohibit defendants from using;

That therefore the complainant has no standing whatever in equity. And further specifically demonstrating the defense herein defendants state that the transactions resulting in the market quotations which complainant is seeking to enjoin defendants from using, are transactions made and conducted on the floor of the Exchange owned, operated and maintained by the complainant itself, from day to day and hour to hour, in which place, with the knowledge, acquiescence and
97 connivance of the complainant, transactions in grains, provisions, commodities, petroleum, etc. are had and are continually taking place, in which the parties to such transactions do not intend to deliver the commodities that they sell, nor receive the commodities that they buy, but intend and in fact do from time to time settle the differences between the buying and selling price or the selling and buying price, as the case may be, without any intention to deliver on either side, and wherein the parties to such transactions in commodities intend to close the transactions in which they deal when the prices reach a certain figure; without any intention to make any deliveries, or to receive proffered deliveries and that such transactions so carried on and permitted to be carried on and sanctioned by the complainant are the transactions which result in market quotations which are the same market quotations which the complainant is now seeking to prohibit the defendants from using, and that the complainant is not only conducting and permitting to be conducted a place where such transactions resulting in such market quotations are permitted, but it is also engaged in the business of maintaining a clearing house for the express purpose of settling differences between parties that may deal in commodities on the floors of this Exchange, without ever making any deliveries of commodities sold, or receiving the delivery of commodities purchased, and in which transactions neither party to the same intends a delivery thereof, and in which transactions both parties con-

template and intend to settle merely the differences between the buying and selling prices, all with the knowledge of the that complainant and it has inaugurated and now maintains such place for the purpose of enabling such parties so engaged in bucket shop transactions to wit, in the manner aforesaid, of carrying out their transactions and deals without
98 either party ever making or intending to make delivery and that these transactions which the complainant is aiding others in carrying out as aforesaid, in violation of law, are the transactions which produce the quotations which complainant is seeking to enjoin the defendants from having and receiving. That the statutes of the state of Illinois, where said complainant is located, and conducts and permits to be conducted said unlawful business resulting in the quotations which it seeks to enjoin defendants from using, and the statutes of the state of Illinois which they are violating in their their business transactions, resulting in quotations which they are seeking to enjoin defendants from using are as follows:

"That it shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept within this state any bucket shop, office store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins; or when the party buying any of such property or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold; and the keeping of all such places is hereby prohibited. Any corporation or person, whether acting individually or as a member or as an officer, agent or employe of any corporation, association or co-partnership, who shall be guilty of violating this section shall, upon conviction thereof, be fined in any sum not less than $200 and not more than $500; and any person or persons who shall be guilty of a second offense under this statute, in addition to the penalty above described, shall, upon conviction, be imprisoned in the county jail for the period of six months, and if a corpora-
99 tion, shall be liable to forfeiture of its charter. And the continuance of such establishment after first conviction, shall be deemed a second offense."

"It shall not be necessary, in order to commit the offense defined in section 1 of this act, that both the buyer and the seller shall agree to do any of the acts therein prohibited, but the same crime shall be complete against any corporation,

association, co-partnership or person thus pretending or offering to sell or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transactions as aforesaid, shall be deemed an accessory, and upon conviction thereof, shall be fined and punished the same as the principal and as provided in section one of this Act."

And the complainants, in keeping said place known as the Exchange Hall, at which transactions are had from time to time and day to day, with its knowledge and consent, and with its aid and assistance, which transactions result in market quotations and which are the same market quotations that complainant is seeking to enjoin defendants from receiving is also violative of the statutes of Missouri, to wit: of sections 2223 of the revised statutes of Missouri 1899, page 620, which statute provides that it shall be unlawful for any corporation, association or partnership or other person to keep or cause to be kept in the state of Missouri, any place wherein is conducted or permitted the pretended buying or selling of the shares of stocks, bonds, grain, provisions and commodities on margins without any intention of receiving and paying for the the property so bought or delivering the property so sold, and where the party buying any such commodity or offering to buy the same, does not intend to actually receive the same if purchased, or to deliver the same if sold, and the keeping of all such places is prohibited by said section.

Therefore these defendants charge that the complainant in this cause is not only keeping but is causing to be kept and aiding and assisting in keeping a place where parties in violation of the statutes of both states are, from day to day and hour to hour, with complainant's knowledge, consent and with its aid and assistance, are and have been buying and selling grain and commodities between themselves and for others wherein the parties to such transactions do not intend to make deliveries of property sold or to receive and accept property purchased but intend only to settle the difference between the buying and selling price. And as a result of such transactions the complainant is providing the means of sending out market quotations and is aiding in sending out market quotations and displaying and exhibiting the same, which are the result of such illegal transactions, and that such market quotations so derived from such illegal transactions are the same and only market

quotations which the complainant in this cause is now seeking to prohibit the defendant from using.

And therefore, defendants allege that complainant is itself creating and permitting to be created, in violation of law the quotations which it seeks to prevent the defendants from using and for that reason if for no other, complainant in this case is without standing in a court of equity.

101 Defendants as to the third paragraph of said bill, answering admit that at the present time there are from 1800 to 2000 members of said complainant company; and admit that said complainant has provided in the city of Chicago, an exchange building which cost upwards of one million dollars; and upon information and belief allege the facts to be that such building and grounds upon which the same stands, are worth at the present time more than two million dollars; and further allege the fact to be that the said complainant has no right or authority under its charter to hold property of any such value; that as to the costs of maintaining the building and conducting such exchange, these defendants do not know, and do not know about the yearly assessment upon the members of said board for the purpose of raising money to pay such expense; and will therefore neither admit nor deny the allegation of the bill in that regard, but pray for strict proof of those allegations in the bill upon the hearing of this cause. Defendants admit on information and belief that each membership is worth, to sell or exchange, the sum of about $2300 but expressly and positively denies that any person of good character and business integrity can become a member of said Board of Trade of the City of Chicago, upon application thereto, and paying its regular initation fee, or by acquiring in lieu thereof, from a member the transfer of an existing membership as stated and set forth in said bill of complaint, and allege the fact to be that said Board of Trade has set itself up as being able to dictate as to what persons are persons of good character and of business integrity, and they have held that some of the best people in the country, for some reason, are not qualified to become members of said board, and they have declined and will decline to admit any person to membership on said Board of Trade who is conducting a business in competition with the business of the members of said Board, and who will not agree to transact

102 all his business on the floor of the Exchange room of said Board of Trade.

Defendants admit that complainant has provided within said Exchange Building, for the exclusive use of its own members an Exchange Hall, where many of its members meet every business day, between the hours of 9:30 A. M. and 1:15 P. M. except on

Saturdays, when the market hours are from 9:30 A. M. until 12 M., to buy and sell for themselves and as brokers and commission men for their customers, for present and future delivery, all kinds of grain and hog products and that the value of said transactions aggregate many millions of bushels of grain and many millions of pounds of hog products annually, and admit that the business conducted on said Board of Trade has become so large and has been so large for a great number of years that said Exchange has become one of the great grain and provision parkets in the United States and admit that some of such purchases and sales are permitted by said complainant to be made and are made only during said market hours and by open viva [voca] bidding, and allege the fact to be that many purchases and sales and contracts therefore, are made and executed by the members of said Board in said building without any viva voce or public bidding and defendants admit that the prices made on said Board of Trade by the transactions there conducted during the market hours upon said Exchange and the transactions by the members of said Board as hereinbefore stated and set forth have become a species of property of large value to said complainant, providing said complainant has any property therein, or any right by any means as a corporation and under its charter to receive or collect anything for such market reports as against the rights of the public therein, as hereinbefore stated and set forth, and defendants deny that the said complainant has any such interest in such market reports as entitles it to sell or contract for the sale thereof, or to
103 make any promises or arrangements with any person or persons whomsover about such market reports, and deny that the said complainant has any right under its charter or under the law of the land to dictate in any way as to who shall and who shall not be permitted to receive such market reports or to fix the terms or price at which any person or persons may receive such reports.

Defendants further answering upon information and belief state the fact to be that at one time telegraph companies were willing to pay the said complainant large sums of money for the privilege of receiving instantaneously said quotations and selling the same to their customers, but whether at the present time any telegraph companies are so willing, these defendants have not sufficient information to either admit or deny that allegation in said bill and therefore would require complainant to make such proof thereof on the hearing of this cause, as it shall be advised is material or necessary. Defendants admit that many persons throughout the United States, who are engaged in the grain and provision business are willing to pay and for many years have paid telegraph companies large sums of money

for such market reports, and defendants allege the fact to be, upon information and belief, that never, up to within a year last past, did the Board of Trade attempt to charge anything for market reports and never attempted to collect or receive revenue of itself for such reports, and further in the same manner allege the fact to be that the said Board of Trade has no right or authority under its charter, to do or conduct any business for pecuniary profit. That there is no provision, either in the charter or in the by-laws, rules and regulations of said Board of Trade for the distribution of pecuniary profit among its members, and there is no provision or power under which the said complainant has any right or authority to issue stock or to have stockholders, or to declare dividends. That said corporation
104 was not organized under any law of the state of Illinois authorizing the organization of such a company for pecuniary profit.

Defendants further answering say, that they do not know except as they are informed by the allegations of said bill, what the present market price or prices which said telegraph companies are able to receive from their customers for the instantaneous and continuous quotations from said Board of Trade are, and therefore, they will require the complainant to make such proof in regard thereto on the hearing of this cause, as it shall be advised is material or necessary.

Defendants further answering, say that they do not know how much said complainant realizes from the sale of said quotations in the city of Chicago, and therefore can neither admit nor deny the allegation in said bill in that regard, but defendants allege the fact to be that said complainant has no right, power or authority as a corporation, to receive anything for such quotations in the City of Chicago, and again allege the fact to be that the said complainant has no right, power or authority to sell such quotations or market reports as against or to the exclusion of the rights of the public therein, and any sale or pretended sale made by said complainant of such quotations and market reports is absolutely void as against the rights of any person, persons or corporations who may be included as a member or members of the public; that if it be true, (which defendants deny) that the said Board of Trade has a right to control and to sell said qotations and market reports, then the value of the same to said Board of Trade and complainant's ability to sell the same, would depend upon complainant's having or retaining the power to confine the transmission and distribution of said quotations to such telegraph companies and other distributing agencies as would contract therefor with complainant and upon terms which the complainant might be

able to dictate and the value of said quotations of com-
105 plainant will be much impaired if persons are allowed to receive or take without right or surreptitiously or by theft, or to use the same or distribute them to the public for use as stated in said bill but defendants deny that complainant has the right, power or authority to restrict the use of said quotations and market reports or to dictate in any manner as to the distribution thereof, and has no right or authority to dictate as to whom any telegraph companies may or may not serve, or what price should be charged for such service. Defendants deny that said quotations are such a species of property that the said complainants can now, in any way, under authority of law or right and justice, prevent the same from being generally published in a way to make them free to the public.

Defendants as to the fourth paragraph of said bill of complaint say that they are not sufficiently advised as to all of the matters in that paragraph stated, to either admit or deny the allegations of the bill in that regard, and will require the complainant, on the hearing of this cause, to make such proof thereto as it shall be advised is material or necessary.

As to the fifth paragraph in said bill of complaint, down to the statement therein that on the 1st day of April, 1901, the said complainant entered into a certain agreement with certain telegraph companies, these defendants, answering, say: that they have not sufficient knowledge upon the subject to even admit or deny the allegations in that paragraph contained, and will require said complainant, on the hearing of this cause, to make strict proof thereof, if the same be material or necessary in this case. That as to the part of said paragraph commencing with the statement that on the 1st day of April, 1901, the said complainant and said Western Union Telegraph Company and said Postal Telegraph Cable Company entered into and executed an agreement, a copy of which is in said paragraph contained, these defendants admit, upon informa-
106 tion and belief, that such an agreement was made, executed an delivered, but defendants deny that such agreement was of any binding force or effect, either upon said complainant, or upon either of said telegraph companies, beyond fixing the fact that the said Board of Trade, by that agreement, sold all of its interest in said quotations and market reports at a price which the said telegraph companies thereby agreed to pay, even if the said Board of Trade had any interest in or power to sell such market reports and quotations, which the defendants here deny; that said agreement was null and void for the reason that it is contrary to law, and contrary to

public policy and contains provisions absolutely ultra vires as to the said complainant, and as to each of the telegraph companies named therein and the public. Defendants further allege the fact to be that ever since the year 1892, the Board of Trade has been attempting as hereinbefore stated, to foster and maintain in its members, a monopoly of all of the grain and provision business of the country, and especially that part of it usually styled "Commission business", and to that end, from the year last aforesaid, the said complainant has devised many means all of which, down to this last attempted, have been failures and because of the failure of all their schemes, the said complainant company, for the same purpose, namely, to foster and maintain a monopoly in its own members, compelled the telegraph companies, defendants named herein to enter into such an agreement as that last mentioned; that such agreement was not entered into voluntarily, and upon motion of said defendants telegraph companies, but was absolutely brought about by the dictation of said complainant in refusing to do as the law requires, and to allow the market reports of prices of commodities to be sent to the public; that such act, on the part of the said complainant, is contrary to the law of the state of Missouri, applicable to pools, trusts and con-
107 spiracies, and is section 8965 and 8966 of article one of chapter 143 of the Revised Statutes of 1899 of the state of Missouri; said section 8966 being as follows:

That from and after the passage of this article, all arrangements, contracts, agreements or combinations between persons or corporations, or between persons or any association of persons or corporations, designed or made with a view to lessen or which tend to lessen full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, and all arrangements, combinations, contracts, or agreements whereby or under the terms of which it is proposed stipulated, provided, agreed or understood that any person, association of persons or corporations doing business in this state shall deal in, or offer for sale in this state, any particular or specified article, product or commodity, and shall not, during the continuance or existence of any such arrangement, combination, contract or agreement, deal in, sell or offer for sale in this state, any competing article, product or commodity, are hereby declared to be against public policy, unlawful and void; and any person, association of persons, or corporation becoming a party to any such arrangement, contract, agreement or combination, shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to the penalties provided for in this article."

Said agreement and the matters therein provided for, and the effect thereof, violates the provisions of section 8978, article two, of said chapter 43, of the revised statutes of 1899 of the state of Missouri, which said section 8978 is as follows, to-wit:

"Every pool, trust, agreement, combination, confederation or understanding, conspiracy or combination entered
108 into or created, or organized by any corporation under the laws of this or any state, or any partnership or individual or other association of persons whatsoever with any other corporation, partnership, individual or any other person or association of persons to regulate, control or fix the price of any article or articles of manufacture, mechanism, merchandise, commodity, convenience or repair, or any product of mining of any kind or class, or any article or thing of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price or prices when so regulated, determined or fixed, and all agreements, combinations, confederations or conspiracies, or pools made, created, entered into or organized by any corporation, partnership, individual or association of individuals to fix the amount or limit the quality of any article or thing whatsoever, or of any article of manufacture, mechanism, commodity, convenience, or repair, or any product of any class, or kind of mining are hereby declared illegal. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of, or party to such pool, trust, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation from buying from or selling to any other person or corporation, who is not a member of or a
109 party to such pool, trust, agreement, combination, confederation, association, or understanding, any such article or thing aforesaid, it shall be a violation of this article."

And these defendants further answering, allege and charge that the said agreement set up and pleaded by the complainant and entered into between it and the said telegraph companies is absolutely null and void, and of no effect, for the reason and because the same is in direct violation of and in

conflict with the Inter State Commerce Law of the United States, passed and adopted by the United States Congress on August 7th, 1888, and known and designated as Chapter 772, as amended which reads as follows, to wit, and entitled: "An Act supplementary to the act of June 1st, 1862, entitled An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes, and also of the Act of July Second, 1864, and of the acts amendatory of said first named Act," which said act reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds, or loan of credit, for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines, shall forthwith and henceforward by and through their own respective corporate officers and employes, maintain and operate, for railroad, governmental, commercial and all other purposes, telegraph lines, and exercise by themselves alone, all the telegraph franchises conferred upon them and obligations assumed by them as under the acts making the grants aforesaid.

Sec. 2. That whenever any telegraph company shall have accepted the provisions of title 65 of the revised statutes shall extend its line to any station or office of the telegraph line belonging to any one of said railroad or telegraph companies referred to in first section of this act, said telegraph company, so extending its line, shall have the right, and said railroad or telegraph company shall allow the line of said telegraph company so extending its line, to connect with the telegraph line of said railroad or telegraph company, to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company or corporation whatever, and shall receive, deliver and exchange business with connecting telegraph lines on equal terms, and affording equal facilities and without discrimination for or against any one of such connecting lines;

and such exchange of business shall be on terms just and equitable.

Section 3. That if any person, railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph lines, shall refuse or fail in whole or in part, to maintain and operate a telegraph line as provided in this act, and acts, to which this is supplementary, for the use of the government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation or connecting
111 telegraph company may apply for relief to the Inter State Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned, shall abide by and perform such order; and it shall be the duty of the Inter State Commerce Commission, when such determination and order are had, to notify the parties concerned, and if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States at the relation of either of said Inter State Commerce Commissioners; Provided, That the said Commissioners may institute any inquiry upon their own motion in the same manner and to the same effect as though complaint had been made.

Sec. 4. That in order to secure and preserve to the United States the full value and benefit of its liens, upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies, referred to in the first section of this act, and to have the same possessed used and operated in conformity with the provisions of this act, and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney General of the United States by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and other acts hereinbefore mentioned, and under all acts of Congress relating to such railroad and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever, claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts

set aside and annulled, which have been unlawfully and
112 beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company or corporation.

Sec. 5. That any officer or agent of said railroad or telegraph companies, or of any company operating the railroads, and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act, and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the government and public, equal facilities, or to secure to each of said connecting telegraph lines, equal advantages and facilities in the interchange of business as herein provided for, without any discrimination or whatever for, adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time, to order or orders of the Inter State Commerce Commission shall, in every such case of refusal or failure, be guilty of a misdemeanor and on conviction thereof, shall, in every such case, be fined in a sum not exceeding one thousand dollars; and may be imprisoned not less than six months; and in every such case of refusal or failure, the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company, whose officer or agent may be guilty thereof, in the Circuit or District Court of the United States, in any state or territory in which any portion of the road or telegraph lines of said company may be situated; and in case of suit, process may be served upon any agent of the company found in such state or territory, and such service shall be held by the courts good and sufficient.

113 Sec. 6. That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Inter State Commerce Commission, copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever, in reference to the ownership, possession, maintenance, control, use or operation of any telegraph lines or property over its right of way, or upon and also a report describing with sufficient certainty, the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the

telegraph lines and property upon its rights of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter, to report to the Inter State Commerce Commission with reasonable fullness and certainty, the nature, extent and value, and condition of the telegraph lines and property then belonging to it, the gross earnings and all expenses of maintenance use and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of report which said commission shall prescribe; and if any of such railroad or telegraph companies shall refuse to make such reports or any report as may be called for by said commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars, to be recovered by the Attorney General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Inter State Commerce Commission, to inform the Attorney General of all such cases of neglect or refusal, whose duty it shall
114 be to proceed at once to judicially enforce the forfeitures hereinbefore provided.

Section 7. That nothing in this act shall be construed to affect or impair the rights of Congress, at any time hereafter, to alter, amend or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment or repeal as in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude or impair any right, or remedy in the premises now existing in the United States, or any authority that the Postmaster General now has, under title 65, of the revised statutes, to fix rates, or, of the Government, to purchase lines, as provided under said title, or to have its messages given precedence in transmission."

That the defendant telegraph companies and each of them, come within and are subject to the provisions of the act last aforesaid, and have accepted and adopted the same, and the said Board of Trade, by entering into said agreement also violates the said act and the provisions thereof.

Defendants as to the seventh paragraph of said bill of complaint, answering say: That they do not know whether on or

about the 31st day of July, 1900, a contract with the Cleveland Telegraph Company was entered into as in that paragraph stated and set forth, and therefore can neither admit nor deny the allegations in that regard, and will require complainant on the hearing of this cause, to make such proof thereof as it shall be advised, if the same is material, necessary, proper or legal.

Defendants, in answer to the eighth paragraph of said bill, answering, say: That it may be true as therein stated that no person, firm or corporation is receiving said market quotations from either of said defendant telegraph companies without having first signed one of the agreements in writing above
115 in said bill of complaint set out in said contract with said telegraph companies, and it is true that neither said Christie Grain & Stock Company nor said Christie has signed any application or contract, as required by said contract with said telegraph companies, and that neither of them signed any correspondents contract as provided in said contract with said telegraph companies, and defendants allege the fact to be that neither the said complainant nor either of said telegraph companies has any right, power or authority to insist upon any person or corporation signing such an agreement as a condition of his or their receiving such market reports, and using them in his or their business as they may see fit; and defendants deny that by reason of the matters set forth in section eight, no person receiving said quotations from either of said telegraph companies, is of right, entitled to re-transmit the same to either said Christie Grain & Stock Company or to said Christie, and deny that said Christie Grain & Stock Company or said Christie is not entitled to receive or use the said market quotations and reports and again allege the fact to be that the said market reports and quotations are coupled with a public interest and that any person or corporation who desires to receive them, has a perfect right thereto, and to use them as he or they may see fit, and in so doing if any criminal law has been violated then the person so violating that law is subject to prosecution under the criminal statutes of the states and is not subject to the prosecution, dictation, direction or control in any way of the Board of Trade of the City of Chicago.

These defendants further answering as to the ninth paragraph of said bill, answering, deny: That the defendants or any of them, or any or either of them is wrongfully, or stealthfully acquiring the said market reports or quotations and deny that either of them is receiving in the city of Kansas
116 City, without right, surreptitiously or by theft, or from persons who are so receiving the same, said continuous quotations and deny that either of said defendants is using or

exposing the same, or any thereof acquired as aforesaid, to public view, as in said paragraph of said bill mentioned and set forth, but defendants admit that neither of them has made any contract with either of said telegraph companies and admit that neither of them is paying either of said telegraph companies anything therefor, and allege the fact to be that they have paid nothing for said market reports for the reasons as hereinbefore stated.

Defendants as to the tenth paragraph of said bill answering deny: That any unauthorized use of said quotations by these defendants or either of them, without their being obliged to pay said complainant anything therefor, is calculated to or in time will, if not entirely stopped or prevented, destroy the value of such quotations and deny that no telegraph company will be able to pay complainant its price therefor, but allege the fact to be that said complainant and said defendant telegraph companies have and has no right, power or authority whatever to enter into an agreement of any kind, nature or description which shall prevent competition with others as to the collection and transmission of market reports. Defendants admit that if one person within the jurisdiction of this court be allowed to secure such quotations without restrictions as to the use thereof, which said complainant imposes as in said bill of complaint contained, such person can, if he will and so desires, furnish them to all the bucket shops and other persons within the United States desiring them, and thus entirely defeat the efforts of said complainant to prevent their use in bucket shops as the basis of their illegal business; as stated and set forth in said bill of complaint; but defendants deny that the said Board of Trade of the City of Chicago,
117 has any right, power or authority to prevent bucket shops using said market reports and quotations just as freely as the persons conducting bucket shops may use anything else that is public, providing they pay for obtaining such use; that the Board of Trade of the City of Chicago has no right to dictate what people violating any law have the right under any other law to receive as being members of the public, but whether that be so or not, defendants deny that they are or that either of them is conducting a bucket shop within the meaning of the law; and the meaning of the allegations of said bill of complaint; that as to whether the use of said market reports in bucket shops as the basis of their illegal business to destroy complainant's right to realize money from the sale of said quotations, these defendants cannot state, but they again allege the fact to be that the said Board of Trade has not now and never did have the exclusive right to use and to disseminate the said market reports, nor to control or

direct what shall or shall not be done with them, or who shall or shall not have access to them after they have passed into the hands of the public carriers of the country and been distributed by said public carriers throughout the country for the use and benefit of the public. And defendants further allege the fact to be that the said Western Union Telegraph Company and the said Postal Telegraph Cable Company now have, and have been receiving for some time last past, the said continuous market reports and transmitting them by telegraph from the city of Chicago in the state of Illinois, to Kansas City in the State of Missouri, and have been delivering the same only to such parties as would sign the contract provided for in the agreement between the Board of Trade and the telegraph companies, set up in the orator's complaint, and are delivering them only to such parties as the Board of Trade directs and orders them to deliver them to, and only when the
118 Board of Trade shall order their delivery, and are also sending said quotations from the state of Illinois aforesaid, into the city of St. Louis in the state of Missouri, to such parties only as will sign contracts heretofore mentioned, and as shall be dictated and approved by the Board of Trade of Chicago. These defendants now state that said telegraph companies after receiving said public market quotations and news, onto their wires and public facilities, they are and then become and always have been, immediately impressed with a public trust, and with the right of the public thereto in the hands of the said telegraph companies, and that they cannot be permitted to enter into any arrangement or plan by which they will be or can be allowed to receive into their possession or onto their public facilities and telegraph wires, such public market quotations so as to deprive said market quotations and news of its public character, when coming into their possession as public carriers, using the facilities of the United States so as to discriminate or in any manner so as to justify it in refusing, after having received the same, and using the public facilities for its transmission to be held and retained as the private information of the Board of Trade of Chicago, or any other party or of any parties that might be designated by the Board of Trade, and when so receiving said market quotations cannot be permitted to be allowed to make the same thereafter, the subject of private contract either with the Board of Trade or with themselves, and that they cannot and ought not to be allowed under any arrangement whatever to use the public facilities and bring such public information and quotations into the state or elsewhere and be permitted to use them, so as to discriminate against the citizens of this state, and allow such parties to have and receive them, which the Board of Trade may direct, and refuse to allow other parties

to have them upon proper terms and conditions, and that such is the effect of said contract, so made and entered into, and of the transactions and acts of said companies in pursu-
119 ance thereof.

These defendants as to the eleventh paragraph of said bill, answering admit; That the said Christie Grain & Stock Company has formally demanded of said Western Union Telegraph Company (and also of the Postal Telegraph Cable Company) that it furnish said Christie Grain & Stock Company the said market quotations and has notified said telegraph company that it would not sign the application required to be signed, as stated in said bill, in and by said contract between said complainant and the Western Union Telegraph Company, as in said bill set forth, and has demanded of said telegraph company that it furnish said market quotations without the signing by said Christie Grain & Stock Company of such application, and admit that said Christie Grain & Stock Company insists to said Western Union Telegraph Company that it, as a common carrier, is obliged to furnish said quotations to said Christie Grain & Stock Company, without the signing of said application, and admit that said Christie Grain & Stock Company has threatened said telegraph company that if it does not comply with its demands, that said Christie Grain & Stock Company will take steps to compel it to do so; and defendants allege the fact to be that the said Christie Grain & Stock Company has a right, under the law of the land, to obtain from said common carriers, the said last mentioned two telegraph companies, said market reports, and neither of said telegraph companies has the right to refuse to furnish such market reports to the defendant the Christie Grain & Stock Company, upon the same terms that said telegraph company will furnish such reports to the public generally, and as they have been doing for years last past, and would do at the present time, were it not for the illegal contract entered into between said complainant and said telegraph companies as stated and set forth in said bill of complaint; that because said con-
120 tract is illegal and void, contrary to law and contrary to public policy, no excuse is furnished to either of said companies for not complying with the reasonable demand of said Christie Grain & Stock Company.

Defendants further answering deny that complainant is entitled to the relief or any part thereof prayed for in and by its said bill of complaint, and pray the same benefit of this answer as though they had demurred to the said bill for want of equity and for multifariousness in making three telegraph companies parties defendant, together with these defendants, when no contract exists between the complainant and these

defendants and the matters about which any controversy can arise grows out of the contract between the complainant and the telegraph companies defendants, or had by plea in proper words set up the illegal effect of the contract between said complainant and said telegraph companies.

All of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HARKLESS, O'GRADY & CRYSLER,
Attys. for answering Defendants.

A. B. JENKS,
Of Counsel.

State of Missouri,
County of Jackson—ss.

Charles C. Christie, of said county and state, being first duly sworn, deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge except as to the matters and things which are therein stated to be on his
121 and the defendant's The Christie Grain & Stock Company's, information and belief, and as to these matters, he believes it to be true. CHARLES C. CHRISTIE.

Subscribed and sworn to before me this 7th day of Oct. A. D. 1901.

My term expires Sept. 16th, 1902.

[Seal] LENDRUM B. RIDGE,
Notary Public.

Thereafter, to wit, on the 19th day of October, A. D. 1901, complainant filed exceptions to the amended answer of defendants in the above entitled cause, said exceptions being in words and figures as follows, to wit:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain and Stock Company, et al., Defendants.

Exceptions taken by the Complainant to the Amended Answer of the Defendants, Christie Grain and Stock Company and C. C. Christie, filed in this cause on the 7th day of October, 1901, for Impertinence.

First Exception. For that the paragraph commencing on page 17 with the words "And defendants further answering

and by way of affirmative defense to the complainant's alleged cause of action, herein states that the complainant ought not to have or be permitted to have and maintain this action
122 for the reason and cause that said complainant does not come into this court with clean hands" and ending with the following words on page 17, "That therefore the complainant has no standing whatever in equity" is impertinent.

Second Exception. For that the paragraph commencing on page 17 with the words, "And further specifically demonstrating the defense herein, defendants state that the transactions resulting in the market quotations which complainant is seeking to enjoin defendants from using, are transactions conducted on the floor of the Exchange," and ending with the words "are the transactions which produce the quotations which complainant is seeking to enjoin the defendants from having and receiving" on page 19 thereof, is impertinent.

Third Exception. That the passage commencing on page 19 with the words, "That the Statutes of the state of Illinois, where said complainant is located," and ending on page 20, with the following words, "with a view to any such transaction as aforesaid, shall be deemed an accessory, and upon conviction thereof, shall be fined and punished the same as the principal and as provided in section one of this Act," is impertinent.

Fourth Exception. For that the paragraph commencing on page 20 with the words, "And the complainant, in keeping said place known as the Exchange hall, at which transactions are had from time to time and from day to day," and ending with the following words, "where the party buying any such commodity does not intend actually to receive the same if purchased or to deliver the same if sold, and the keeping of all such places is prohibited by said section", on page 20 thereof, is impertinent.

Fifth Exception. For that the paragraph commencing on page 20 with the words "Therefore these defendants charge that the complainant in this cause is not only keeping but is causing to be kept and aiding and assisting in keeping a place,"
123 and ending with the words, "Therefore defendants al-
is
lege that complainant itself creating and permitting to be created in violation of law, the quotations which it seeks to prevent the defendants from using, and for that reason, if for no other, complainant in this case is without standing in a court of equity" on page 21 thereof, is impertinent.

In all which particulars this acceptant excepts to the said amended answer as impertinent, and humbly insists that the said impertinent matter ought to be expunged therefrom.

BOARD OF TRADE OF CITY OF CHICAGO,
By Henry S. Robbins, Frank Hagerman,
Its Solrs.

124 Thereafter, to wit, on the 2nd day of April, 1902; the following orders were filed and entered of record in the above entitled cause:

In the United States Circuit Court, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
No. 2541. vs.
Christie Grain & Stock Company et al., Defendants.

Order.

This cause coming on for hearing upon the exceptions to the amended answer of the defendants, Christie Grain and Stock Company and C. C. Christie, and the court being fully advised in the premises, overrules the exceptions without prejudice to the right of the complainant to raise such questions as are raised by said exceptions upon objections to testimony, nothing in this order to be taken as finally determining any such question.

(Signed) WILLIAM C. HOOK, Judge.

In the United States Circuit Court, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
No. 2541. vs.
Christie Grain and Stock Company et al., Defendants.

Order.

By consent of parties it is hereby ordered that Max H. Whitney be, and he is hereby appointed as special master
125 to take such depositions at Chicago, Illinois, as either party may desire, same to be taken by either party upon five (5) days' notice to either party.

(Signed) WILLIAM C. HOOK, Judge.

We agree to the entry of the above order.
HENRY S. ROBBINS,
FRANK HAGERMAN,
Solicitors for Complainant.
HARKLESS, O'GRADY & CRYSLER,
Solicitors for Christie Grain & Stock Company and C. C. Christie,

On the same day, to wit, on the 2nd day of April, 1902, the following replication was filed in the above entitled cause:

In the United States Circuit Court, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain & Stock Company, C. C. Christie, Western Union Telegraph Company, Postal Telegraph-Cable Company, and Gold and Stock Telegraph Company, Defendants.

Replication of the Board of Trade of the City of Chicago to the joint and several amended answer of Christie Grain and Stock Company and C. C. Christie, two of the defendants to the bill of complaint of said complainant.

126 This repliant, Board of Trade of the City of Chicago, savings and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be ready to aver and prove, as this Honorable Court shall direct; and humbly prays as in and by its said bill it hath already prayed.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By Henry S. Robbins, Its Solicitor.
FRANK HAGERMAN, Of Counsel.

On the same day, to wit, on the 2nd day of April, 1902, a stipulation as to facts was filed in the above entitled cause.

127 Said stipulation is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago,
vs.
Christie Grain and Stock Company et al.

For the purposes of the hearing of the above entitled cause, and for no other purpose, it is stipulated that the following facts shall be considered as established without the introduction of any proof in support thereof.

I. That about the day of its date, there was executed between complainant and the Western Union Telegraph Company and the Postal Telegraph Cable Company, and is still in force, the contract set out in clause VI of said bill.

II. That Exhibit "C" hereto is a copy of the charter granted complainant by the State of Illinois on February 18th, 1859.

III. That either party may file herein and read as depositions herein, to the same effect as if the same had been taken in this cause, subject to the objection as to competency and relevancy, copies of any depositions taken at the city of Chicago, Illinois, before Max H. Whitney, as special master, in a suit pending in the Circuit Court of the United States, for the Southern District of Ohio, wherein the complainant herein was plaintiff and O'Dell Commission Company and others were defendants, said copies to be submitted by the party desiring to use the same to the attorneys of the other parties hereto, at least ten (10) days prior to the use thereof hereunder, for the purpose of verification.

HARKLESS, O'GRADY & CRYSLER,
Attys. for Christie Grain and Stock Co.

128

HENRY S. ROBBINS,
FRANK HAGERMAN,
Attys for Complainant.

Exhibit "C" is in words and figures as follows:

Legislative Act to Incorporate the Board of Trade, Chicago.

Be is enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. That the persons now composing the Board of Trade of the City of Chicago, are hereby created a body politic and corporate under the name and style of the "Board of Trade of the City of Chicago" and by that name may sue and be sued, implead and be impleaded, receive and hold property and effects, real and personal, by gift, devise or purchase, and dispose of the same by sale, lease or otherwise, (said property so held not to exceed at any time the sum of two hundred thousand dollars); may have a common seal, and alter the same from time to time; and make such rules, regulations and by-laws from time to time as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land.

Corporate title.

Limit of property.

Seal.

Power to adopt rules, regulations and by-laws.

Present rules, regulations and by-laws to govern until duly changed.

Section 2. That the rules, regulations and by-laws of the said existing Board of Trade shall be the rules, and by-laws of the corporation hereby created, until the same shall be regularly repealed or altered; and that the present officers of said association, known as the "Board of Trade of the City of Chicago" shall be the officers of the corporation hereby created until their respective officers shall regularly expire or be vacated, or until the election of new officers according to the provisions hereof.

Officers.

Section 3. The officers shall consist of a president, one or more vice-presidents, and such other officers as may be determined upon by the rules, regulations or by-laws of said corporation. All of said officers shall respectively hold their offices for the length of time fixed upon by the rules, and regulations of said corporation hereby created, and until their successors are elected and qualified.

Rules, regulations and by-laws.

Sec. 4. The said corporation is hereby authorized to establish such rules, regulations and by-laws for the management of their business and the mode in which it shall be transacted, as they may think proper.

Manner of holding elections.

Sec. 5. The time and manner of holding elections and making appointments of such officers as are [not] elected, shall be established by the rules, regulations and by-laws of said corporation.

Power to admit and expel.

Sec. 6. Said corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the rules, regulations and by-laws thereof.

Committees of arbitration and appeals.

Sec. 7. Said corporation may constitute and appoint committees of Reference and Arbitration, and Committees of Appeals, who shall be governed by such rules and regulations as may be prescribed in the rules, regulations and by-laws for the settlement of such matters of difference as may be voluntarily submitted for arbitration by members of the Association, or by other persons not members thereof; the acting chairman of either of said committees when sitting as arbitrators, may administer oaths to the parties and witnesses and issue subpoenas and attachments, compelling the attend-

ance of witnesses, the same as justices of the peace, and in like manner directed to any constable to execute.

Executions upon award.

Sec. 8. When any submission shall have been made in writing and a final award shall have been rendered and no appeal taken within the time fixed by the rules or by-laws then on filing such award and submission with the clerk of the Circuit Court, an execution may issue upon such award as if it were a judgment rendered in the Circuit Court and such award shall thenceforth have the force and effect of such a judgment and shall be entered upon the judgment docket of said court.

Bonds.

Sec. 9. It shall be lawful for said corporation, when they shall think proper, to receive and require of and from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts; and the president or secretary is hereby authorized to administer such oaths of office as may be prescribed in the by-laws or rules of said corporation. Said bonds shall be made payable and condition as prescribed by the rules or by-laws of said corporation, and may be sued and the moneys collected and held for the use of the party injured, or such other use as may be determined upon by said corporation.

Oaths of office.

Suits upon bonds.

Inspeectors, gaugers and weighers.

Sec. 10. Said corporation shall have power to appoint one or more persons, as they may see fit, measure, to examine, weigh, gauge or inspect flour, grain, provisions, liquors, lumber or any other article of produce or traffic commonly dealt in by the members of said corporation; and the certificate of such person or inspector as to the quality or quantity of any such article, or their brand or mark upon it, or upon any package containing such article, shall be evidence between buyer and seller of the quantity, grade or quality of the same and shall be binding upon the members of said corporation or others interested, and requiring or assenting to the employment of such weighers, measurers, gaugers or inspectors; nothing herein contained however, shall compel the employment, by any one, of any such appointee.

Certificates, evidence of quantity, grade or quality.

Employment of appointees not obligatory.

Fines.

Sec. 11. Said corporation may inflict fines upon any of its members, and collect the same, for

breach of its rules, regulations or by-laws; but no fine shall exceed five dollars. Such fines may be collected by action of debt, before a justice of the peace, in the name of the corporation. Shall not exceed five dollars.

Sec. 12. Said corporation shall have no Limitation of powers.

132 do or

power or authority to carry on any business excepting such as is usual in the management of boards of trade or chambers of commerce, or as provided in the foregoing sections of this bill.

WM. R. MORRISON,
Speaker of the House of Representatives.
JOHN WOOD,
Speaker of the Senate.
Approved February 18, 1859.
WM. H. BISSELL.

United States of America,
State of Illinois—ss.

I, O. M. Hatch, Secretary of State of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office.

In witness Whereof, I have hereunto set my hand and affixed the great seal of the state at the city of Springfield, this seventh day of March, A. D. 1859. Certificate.

(Seal) O. M. HATCH,
Secretary of State.

133 Thereafter, to wit, on Tuesday, the 5th day of August, A. D. 1902, the same being a day of the regular April Term of said Court, the following decree was filed and entered of record in the above entitled cause:

In the United States Circuit Court, for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
No. 2541. vs.
Christie Grain & Stock Company et al., Defendants.

Order.

This cause coming on for hearing upon the motion of complainants for a preliminary injunction, it was agreed in open court that any order should be entered as of July 7th, 1902, the date when the decision was announced, and after reading

the bill, affidavits and evidence filed herein, and hearing the argument of counsel, for the respective parties, and being fully advised in the premises,

It is ordered that upon complainant's filing its bond in the usual form, and in the penal sum of five thousand dollars ($5000.00) and with a surety to be approved by the clerk of this court, a temporary injunction issue herein, restraining, until the further order of the court, the defendant, Christie Grain & Stock Company and C. C. Christie, and each of them, either acting in his or its own behalf or as a member of any firm, or as agent or officer of any other person, firm or corporation, and also each and every of the agents, employes and servants of said defendants, from receiving or acquiring, directly or indirectly, the continuous quotations of the Chicago Board of Trade, (by which is meant all quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes) or any of them, until they or he, or the person, firm or
134 corporation for which they or any of them shall be acting as agent, officer or employe, shall have first acquired the right to receive the said quotations by contract or purchase from complainant, or such telegraph company as shall lawfully have acquired from the complainant the right to sell and distribute its said market quotations; and also from directly or indirectly using, giving away, posting, selling or distributing said continuous quotations, and from aiding, abetting or assisting any other person, firm or corporation in receiving, selling or distributing the said continuous quotations, until the right to do so shall have been lawfully acquired by said defendants or other persons, as aforesaid.

Said Christie Grain & Stock Company and C. C. Christie pray for an appeal to the United States Circuit Court of Appeals, for the Eighth Judicial Circuit, which appeal is hereby granted.

The Court having heretofore announced to said defendants its decision, the terms upon which the supersedeas bond should supersede the injunctive portion of this order, and the date when the order should be made in time for and for the purpose of permitting them to immediately perfect their appeal and docket the cause in the appellate court, it is further ordered: The supersedeas bond for such appeal is hereby fixed at $3,000.00 and it shall suspend the injunctive portion of the order pending the appeal upon the following conditions only, however, (which are continuing conditions precedent to such suspension), i. e., said defendants shall immediately perfect their appeal and file their transcript in said Court of Appeals on or before the

11th day of August, 1902, and that the appeal be heard at the earliest time at which said court will hear the same.

August 5, 1902.

(Signed) WILLIAM C. HOOK,
Judge.

135 On the 5th day of August, A.D. 1902, an assignment of errors and petition for appeal were filed in the above entitled cause.

Said assignment of errors is in words and figures as follows:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain & Stock Company and C. C. Christie, Defendants.

Assignment of Errors.

Come now the defendants and file the following assignment of errors to the judgment of the trial court, and upon which they will rely for grounds of reversal on appeal in the above entitled cause.

I.

The court erred in holding and decreeing that the complainant was entitled to any relief in this cause.

II.

The court erred in holding and finding that the complainant in this cause had any sufficient or substantial interests in the subject of the controversy sufficient to justify any relief in equity, and erred in refusing to hold that the complainant had no interest sufficient to justify any relief in the cause.

III.

The court erred in holding and finding and was in error in permitting complainant to have any relief because there was no testimony of any kind showing or tending to show or which justified a holding or finding that the defendants were using or posting any of the quotations mentioned in the bill of complainant, until after they were first made public.

136 IV.

The court erred in its decree and judgment in that under the undisputed evidence, the contract pleaded in the bill entered into between the Board of Trade and the Telegraph

Companies was void and was an unjust discrimination against the rights of the defendants and the public, and in not holding that said contract was beyond the power of the Board of Trade to make, and that it was beyond their power to undertake to sell the quotations to the telegraph companies and to bind the telegraph companies to discriminate and to submit to the Board of Trade the question as to who should or should not receive the same, for the reason that the market quotations were impressed with a public trust and were not the subject of barter or sale between the Board of Trade and the telegraph companies, and that even if they were the subject thereof, the contract was void as being an unjust discrimination against the defendants and the public as to who should or should not receive the market quotations and was an unjust regulation against the defendants and the public, and beyond the power of the companies contracting thereto.

V.

The court erred in granting the complainant any relief for the reason that said contract between the Board of Trade and the Telegraph Companies, set up and pleaded in the bill, pertained to and attempt to affect the question of interstate commercial relations and to affect the matter of interstate commerce, and as such and for that reason, it placed and attempted to place even if otherwise valid, an unjust and unwarranted limitation and embargo upon interstate commerce and was in direct conflict and violation of Section 8 of Article 1, of the Constitution of the United States.

VI.

That said contract between the Board of Trade and the
137 telegraph companies pleaded in the bill, was void and the court erred in holding that the complainants were entitled to any relief thereunder for the further reason that said contract was wholly beyond the power and authority of the Board of Trade or Telegraph Companies to enter into, for the reason that the same was an attempt to enter into a private contract pertaining to a subject and subject matter in restraint of contracts, and the free right to contract and in restraint of interstate commerce, in violation of said provisions of the Constitution above cited.

VII.

That the court erred in giving the complainant any relief because the contract made and entered into between the Board of Trade and the Telegraph Companies, pleaded in the bill, and upon which the right of the complainant was founded, was void and beyond the power of said parties to contract concerning,

for the reason that the same violates the anti-trust act of Congress, passed July 2nd, 1890, found in Volume 26, United States Statutes at large, Page 209, Chapter 647, and as enunciated in the case of Addyston Pipe & Steel Co. vs. U. S., in the 175th volume of the United States Supreme Court Reports, Page 211, in that it was an attempt on the part of the parties thereto, to attempt to enter into private contract to limit, discriminate and control, as against the defendants and the public at large, the free and unlimited right to engage in interstate commerce and in interstate transactions, and to have and receive information in the state of Missouri and was an attempt on the part of the contracting parties thereto, to control a subject of interstate regulation and interstate commerce, to the exclusive use and benefit of the complainant.

VIII.

The court erred in holding that the complainant was entitled to any relief for the reason that the contract made and entered into between said complainant and the telegraph com-
138 panies was void in that it undertook and prohibited the defendants and the public from receiving and having the market quotations upon the paying of reasonable charges therefor, and upon such terms as other parties like situated were receiving the same.

IX.

The court erred in rendering a decree for the complainants because the said contract between the Board of Trade and the Telegraph Companies was ultra vires, and wholly beyond the authority or right of the parties to enter into, and was an attempt to control a subject of interstate commerce, and a subject in which the defendants and the public had an interest and a right.

X.

The court erred in granting the complainant relief for the reason that the contract between the Board of Trade and Telegraph Companies declared upon in the bill, attempts to and does discriminate against who shall or shall not receive the market quotations brought into the state of Missouri over the public facilities, to wit: over the telegraph lines, so long as the testimony shows that they were distributing to the public generally.

XI.

The court erred in granting to the complainant any relief because the contract made and entered into between the Board of Trade and the Telegraph Companies undertakes to contract

with reference to market quotations which are public property and is an attempt on the part of the Board of Trade and the Telegraph Companies to unjustly discriminate against the public and against the grain dealers of the country, and is a written and avowed declaration and purpose on the part of the Board of Trade to control the entire grain market of the country, and to prevent any and all persons from using or having the quotations of the grain markets unless such persons should either be a member of the Board of Trade of Chicago, or agree to trade through and by its members only. And if sustained and enforced, places in the power of the Board of Trade, the complainant, to prevent any person or persons in the United States from having or receiving the market quotations, or knowing the condition of the public market, unless such parties pay tribute to the Board of Trade or its members.

XII.

The Court erred in finding for the complainant for the reason that the evidence and record shows that the Board of Trade, the complainant, upon application of the defendants, refused to allow them to receive the market quotations unless the defendants would agree to place its deals and trade through the members of the Board of Trade, the complainant, and for that reason, also, the object and purpose of the contract was shown to be leveled against competition and is a contract permitting unjust discrimination.

XIII.

The court erred in its finding and decree and in the opinion rendered upon which the decree is founded in that the market quotations which the complainant sought by the bill to prevent the defendants from using or having, were market quotations made under such circumstances and continued for so many years to be used without limitation by the public, that the same had become impressed with a public right, and a part of the community property of the country at large, and in holding and decreeing that the complainant was entitled to any exclusive property right therein as against the defendants and the public.

XIV.

The court erred in finding for the complainant and entering the decree for the further reason that the testimony in the cause shows that the market quotations had been put into the channels of commerce for more than thirty years, and placed in the hands of the public without limitation, so that the business of the country had been accommodated to and the grain re-
139 lations of the country were regulated thereby, so that the same had become a part of the public property and im-

pressed with a quasi-public trust, and hence, were not subject to control, discrimination or limitation, by the complainant or the telegraph companies, and therefore were not the subject of control by either of said companies and in decreeing that the complainants were entitled to any relief with reference to the limitation or qualification concerning the same, and in enjoining the defendants from the reasonable use thereof, as a part of the public.

XV.

The court erred in entering the decree for the complainant for the reason that the testimony shows that said market quotations were impressed with a quasi-public trust and were brought into the state of Missouri and distributed to numerous other parties, residents of said state, and when brought into the state, they were within the control of the courts, enforcing obligations of common carriers, and public rights, without discrimination, and when so brought into the state, the defendants were entitled to the use thereof upon paying the telegraph company its reasonable charges therefor, and any attempt on the part of the Board of Trade or the Telegraph Companies to control the same for the exclusive use or benefit of parties that the complainant, the Board of Trade, might direct, was wholly beyond the authority of either of said corporations, and therefore complainant was entitled to no relief.

XVI.

The court erred in its judgment, decree and opinion, in holding that the market quotations could not be the subject of control by the courts until the legislature had manifested its intention to make them public property, for the reason that the public right always existed therein, and the right to enforce the right of the public and of the defendants thereto, exists in the courts independent of any action of the legislature.

140

XVII.

The court erred in not holding, decreeing and finding that said market quotations were property impressed with a public trust and right and in its judgment and decree, in giving to the complainant, the right of discrimination and exclusive control pertaining thereto.

XVIII.

The court erred in its decree, judgment and finding because said market quotations were impressed with a qublic right, and that the Board of Trade could not deprive the public of their right thereto, and in not holding and finding that the public and

the defendants had a right to receive the same upon paying reasonable charges of the telegraph company for transmitting the same.

XIX.

The court erred in its judgment and decree for the reason that the testimony did not show that the defendants were engaged in bucket-shopping, or violating the laws pertaining to bucket shops, and such being the fact, even if the Board of Trade and the Telegraph Companies had the right to contract pertaining thereto, the defendants were such parties as were entitled to the quotations in any event, notwithstanding they had refused to sign the contract and application provided for in the agreement between the Board of Trade and the telegraph companies, and being such parties, the court erred in its order restraining the defendants from the use of the same.

XX.

The court erred in rendering a decree for the complainants because under the evidence in the cause complainant was entitled to no relief in equity for the reason that they come into court with unclean hands in that the quotations which complainant sought to restrain and prohibit the defendants from having or using, were quotations made and permitted to be made and brought into existence at a place kept, main-
141 tained and fostered by the complainant, in violation of the statutory laws of the state of Illinois, and of the state of Missouri, and the complainant coming into court under such circumstances had no rights in the quotations which a court of equity should enforce.

XXI.

The court erred in rendering the decree for the reason that the judgment and decree of the court goes entirely beyond and is not within the issues under the pleadings, in that it undertakes to and does not only prohibit the defendants from using or having the quotations for use in its business, but prohibits the defendants from even knowing or getting information pertaining to the market quotations and prohibits and enjoins them from having or possessing knowledge however received, and that it prohibits the defendants from allowing quotations with reference or pertaining to the Chicago market on the floor of the exchange, from passing over its wires, even though not used or offered or claimed to be used by defendants for the purpose of trading or dealing with its patrons or customers. And in that said decree prohibits the defendants from knowing or being advised of market quotations passing over their wires, or having

information of what passes over their wires pertaining to quotations, even though they should never use or offer to use the same.

XXII.

The court erred in not dismissing the complainant's bill for want of equity.

XXIII.

The court erred in not dismissing the complainant's bill and in entering the decree in favor of defendants, because said bill was wholly insufficient in equity to entitle it to any relief.

XXIV.

The court erred because under all the evidence in the cause the same presented no equity or cause for equitable in-
142 terference.

XXV.

The judgment and decree of the court is erroneous because it is wholly unsustained by the testimony and is against the evidence and the weight of the evidence.

XXVI.

The court erred in rendering its decree for the complainant because the undisputed evidence showed that the Board of Trade had wholly exceeded its power and authority under its corporation charter, in that its attempt to sell or traffic in market quotations with the telegraph Companies was wholly foreign to the purpose of its incorporation, and for that reason its acts in entering into the contracts with the Telegraph Companies were ultra vires.

A. B. JENKS and
HARKLESS, O'GRADY & CRYSLER,
Attys. for Defendants.

Said petition for appeal is in words and figures as follows:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain & Stock Company et al., Defendants.

Petition for Allowance of Appeal with Supersedeas.

The above named defendants, Christie Grain & Stock Company and C. C. Christie, conceiving themselves to be aggrieved by the order and decree made and entered in the above entitled

cause on the 7th day of July, A. D. 1902, wherein and
143 whereby said defendants, Christie Grain & Stock Company and C. C. Christie, were enjoined from receiving or surreptitiously acquiring, the quotations of the Chicago Board of Trade, do hereby appeal from said order and decree of July 7th, 1902, to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the assignment of errors filed herein; and they pray that this appeal may be allowed, and that a transcript of the record, testimony, stipulations and all proceedings herein, together with the original exhibits filed herein, be forthwith transmitted to the said United States Circuit Court of Appeals.

A. B. JENKS and
HARKLESS, O'GRADY & CRYSLER,
Solicitors for Defendants.

Thereupon, on the same day, to-wit, on the 5th day of August, A. D. 1902, the following order was filed and entered of record in the above entitled cause:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain & Stock Company et al., Defendants.

Order Allowing Appeal and Supersedas.

The above named defendants, Christie Grain & Stock Company and C. C. Christie, having duly filed their assignment of errors and petition for appeal, on motion of Harkless, O'Grady & Crysler, solicitors for said defendants, it is ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the order and decree heretofore filed and entered herein, on the 7th day of July, A. D. 1902, be and the same is hereby allowed, and that a certified transcript of the record, testimony, stipulations, and all proceedings herein, be
forthwith transmitted to said United States Circuit
144 Court of Appeals. It is further ordered that the clerk of this court be directed to send with said transcript the original exhibits filed herein.

It is further ordered that the bond on appeal be fixed at the sum of three thousand dollars, the same to act as a supersedeas bond, upon the conditions named in the order of injunction of this date, and also as a bond for costs and damages on appeal.

Dated this 5th day of August, A. D. 1902.

(Signed) WILLIAM C. HOOK,
Judge.

145 Said bond for appeal is in words and figures as follows:

United States of America, Sct.

Know all men by these presents that we, Christie Grain and Stock Company and C. C. Christie as principals and W. A. Michael as surety are held and firmly bound unto The Board of Trade of the City of Chicago in the full and just sum of three thousand dollars to be paid to the said The Board of Trade of the City of Chicago its heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 5th day of August, in the year of our Lord, one thousand nine hundred and two.

Whereas, lately at the April term of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in a suit depending in said court between The Board of Trade of the City of Chicago plaintiff and Christie Grain and Stock Company and C. C. Christie are defendants a decree on hearing for temporary injunction was rendered against the said Christie Grain & Stock Co. & C. C. Christie and the Said Christie Grain & Stock Company & C. C. Christie have obtained an order of appeal of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Board of Trade of the City of Chicago, citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the conditions of the above obligation is such that if the said Christie Grain & Stock Company & C. C. Christie shall prosecute said their appeal to effect and answer all damages and costs if they [—] to make good their plea, then the above obligation to be void else to remain in full force and virtue.

CHRISTIE GRAIN & STOCK CO. [Seal]

146 By C. C. Christie, Pres. [Seal]

Signed and sealed in the presence of

C. C. CHRISTIE, [Seal]

W. A. MICHAEL. [Seal]

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) WILLIAM C. HOOK,
Judge.

147 Said bond for injunction is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Plaintiff,
No. 2541. vs. In Equity.
Christie Grain & Stock Co. et al., Defendants.

Bond.

Know all Men by These Presents, That the Board of Trade of the City of Chicago, as principal, and The City Trust Safe Deposit & Surety Company of Philadelphia as surety, are held and firmly bound to the Christie Grain & Stock Company and C. C. Christie, in the penal sum of five thousand dollars ($5,000.00) well and truly to be paid, and to the payment whereof we bind ourselves, our legal representatives, successors and assigns, upon the following conditions:

Whereas, upon August 5, 1902, there was entered an order in above entitled case enjoining the defendants, Christie Grain & Stock Company and C. C. Christie temporarily,

Now, if the Board of Trade of the City of Chicago shall pay all damages caused by the said defendants by reason of the said injunction, if the same should be hereafter dissolved, then this obligation to be null and void; otherwise in full force and effect.

Witness our hands this August 5, 1902.

BOARD OF TRADE OF THE CITY OF CHICAGO
By Frank Hagerman, Its attorney.
THE CITY TRUST SAFE DEPOSIT AND SURETY
(Seal) COMPANY OF PHILADELPHIA,
By H. B. Mann, Resident Asst. Secretary.
Samuel W. Jurden, Resident Vice Prest.

Approved:
WILLIAM C. HOOK, Judge.

150 The following affidavits were filed herein on the 1st day of May, 1902:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago,
vs.
Christie Grain and Stock Company et al.

United States of America,
Northern District of Illinois,
County of Cook—ss.

H. J. Davis, being duly sworn, deposes and says that he is attorney for the Western Union Telegraph Company and is familiar with the charter and organization of said company; and that said telegraph company is not such a telegraph company as is referred to in section 1 of "An act supplementary to the Act of June 1st, 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the government the use of the same for postal, military and other purposes," and also of the act of July 2nd, 1854, and of the act amendatory of said first named Act," in that and for the reason that said Western Union Telegraph Company is not one to which the United States has granted any subsidy in lands or bonds or loans of credit, for the construction of either railroad or telegraph lines, and

Further deponent sayeth not.

H. J. DAVIS.

Subscribed and sworn to before me this 28th day of April, A. D. 1902.

[Seal]

HARRY R. TOBEY,
Notary Public.

151 In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago,
vs.
Christie Grain and Stock Company et al.

United States of America,
Northern District of Illinois,
County of Cook—ss.

Charles M. Baker, being duly sworn, deposes and says that he is Assistant General Superintendent of the Postal Telegraph Cable Company, and that said telegraph company is not such a telegraph company as is referred to in section 1 of "An act supplementary to the Act of June 1st, 1862, entitled "An Act

to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the government the use of the same for postal, military and other purposes," and also of the act of July 2nd, 1854, and of the act amendatory of said first named Act," in that and for the reason that said Postal Telegraph Cable Company is not one to which the United States has granted any subsidy in lands or bonds or loans of credit, for the construction of either railroad or telegraph lines, and

Further deponent sayeth not.

CHARLES M. BAKER.

Subscribed and sworn to before me this 28th day of April, A. D. 1902.

[Seal] HARRY R. TOBEY,
Notary Public.

152 State of Illinois,
County of Cook—ss.

United States Circuit Court for the Western Division, Western District of Missouri.

Board of Trade of City of Chicago,
vs.
Christie Grain & Stock Co. et al.

Max H. Whitney, Esq., Special Master.

April 25, 26, 28, 1902.

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153 In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

Board of Trade of the City of Chicago, Complainant,
No. 2541. vs.
Christie Grain and Stock Company et al., Defendants.

Order.

By consent of parties it is hereby ordered that Max H. Whitney be and he is hereby appointed as Special Master to take

such depositions at Chicago, Illinois, as either party may desire, same to be taken by either party upon five (5) days notice to either party.

.....

Judge.

We agree to the entry of the above order.

HENRY S. ROBBINS,
FRANK HAGERMAN,
Solicitors for Complainant.
HARKLESS, O'GRADY & CRYSLER,
Solicitors for Christie Grain and Stock Company and C. C. Christie.

154 I, Max H. Whitney, Special Master appointed (by consent of parties) in the cause of Board of Trade of the City of Chicago vs. Christie Grain & Stock Company et al., pending in the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City, Missouri; do hereby certify that on the 25th, 26th and 28th days of April, 1902, pursuant to the attached notice and to adjournments regularly had, I was attended by Henry S. Robbins, Esq., of counsel for complainant, and A. B. Jenks and ..... Harkness of counsel for defendants, and by the witnesses Charles E. Marcy, Charles B. Pierce, Charles A. Weare, James Pettit, Frank B. Rice, Samuel E. Baker, Frederick S. Martin, ...; and the said witnesses, who were each of sound mind and lawful age, having been by me first carefully examined and cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the said cause, gave their testimony; which said testimony was, by consent of counsel for the respective parties, taken down by a stenographer appointed by me for that purpose, in the presence of the witnesses and from their statements, and the said stenographic notes were afterwards reduced to writing by a typewriter, and the signatures of the said witnesses to the same were waived by consent of counsel for the respective parties.

And I do further certify that I am not of counsel nor attorney for either of the parties to said cause, nor in any way interested in the event thereof.

I further certify that the cost of the taking of said testimony and the transcribing of the same, and of my fees therein, aggregate $158.50, which sum has been paid by complainant.

The said transcript of said testimony, consisting of 217 pages, is attached hereto.

In testimony whereof I have hereunto set my hand and seal this 30th day of April, 1902, at Chicago, Illinois.

[Seal] MAX H. WHITNEY,
Special Master as above.

155 United States of America,
Western District of Missouri—ss.

In the Circuit Court of the United States for the Western District of Missouri, Western Division.

Board of Trade of the City of Chicago, Complainant,
No. 2541. against
Christie Grain and Stock Company et al., Defendants.

You, the above named defendants, or Harkless, O'Grady & Crysler, Karnes, New, Hall & Krauthoff, and Gage, Ladd & Small, your Attorneys of record, are hereby notified that on Friday, the twenty-fifth day of April, A. D. 1902, the above named Complainant will, in the above entitled suit, at the office of Max H. Whitney, Monadnock Building, in the City of Chicago, in the County of Cook, in the State of Illinois, take depositions of James Pettit, George E. Marcy, Charles B. Pierce and others, to be used as evidence on the trial of said suit, and on the hearing of each and every motion and application therein. Said depositions will be taken because the testimony of said witnesses is necessary on the trial of said action, and said witnesses live more than one hundred miles from the place of trial of said action. And that the taking of said depositions will be commenced at ten o'clock A. M. of said day, and that the taking of the same will be adjourned and continued from day to day, Sundays excepted, at the same place until the taking of the same is completed.

Dated this 19th day of April, A. D. 1902.

HENRY S. ROBBINS,
FRANK HAGERMAN,
Attorneys for Complainant.

Service of the above notice is hereby accepted, and issue of dedimus, filing of interrogatories, and all exceptions as to time are hereby waived, this 19th day of April, 1902.

.....

Attorneys of Record for Christie Grain and Stock Company and C. C. Christie.

KARNES, NEW, HALL & KRAUTHOFF,
Solicitors for Western Union Telegraph Co., and Gold and Stock Telegraph Co.

156 GAGE, LADD & SMALL,
Solicitors for Postal Telegraph-Cable Co.

State of Missouri,
County of Jackson—ss.

Oscar Hochland, of lawful age, being first duly sworn, upon his oath states that he served the within notice by delivering a copy thereof to James H. Harkless, of the law firm of Harkless, O'Grady & Crysler, on the 19th day of April, 1902, said firm being the solicitors for Christie Grain and Stock Company and C. C. Christie, defendants in above cause.

OSCAR HOCHLAND.

Subscribed and sworn to before me this 19th day of April, 1902.

[Seal] GEORGE W. WELSH,
Notary Public within and for Jackson County, Missouri.

My Commission expires December 23rd, 1905.

Friday, April 25, 1902.
10 o'clock a. m.

Chicago Board of Trade,
v.
Christie Grain & Stock Company.

Proceedings had before Master in Chancery, Max H. Whitney, in the above matter, at Room 437 Monadnock Building, Chicago, Illinois.

Henry S. Robbins, Esq., appearing on behalf of the Complainant; and
A. B. Jenks, Esq., and ..... Harkness, Esq., appearing on behalf of the Defendant.

157 George E. Marcy, called as a witness on behalf of the complainant, in rebuttal, being first duly sworn, testified as follows:

Direct Examination

By Mr. Robbins:

Q. What is your name? A. G. E. Marcy.
Q. What is your business?
A. Vice-President of the Armour Grain Company.
Q. How long have you been in that capacity?
A. Ever since the organization, about a year and a half.
Q. What are your duties as Vice-President?

Mr. Jenks: I object. That is a mere conclusion. The question should be, what does he do. He may not perform his duties.

The Master: Answer the question as Mr. Jenks puts it.

Mr. Robbins:

Q. What do you do as Vice-President of that Company?

A. Buy and sell grain—help manage the business.

Q. Will you describe the nature of the business of the Armour Grain Company?

A. We buy grain all through the west and sell it abroad, in the east here, in the Chicago market, Milwaukee market, or Minneapolis market, or Kansas City market—general merchants.

Q. When you would buy it in the country, do you buy it for cash? A. As soon as we ship it.

Q. What is the next step after you have brought it in the country? It is shipped to Chicago?

A. Sometimes, and sometimes held in elevators in the country—sometimes held in corn-cribs and sometimes shipped to Chicago or Milwaukee or some market.

Q. What is the next step after you have bought it in the country? What do you do, if anything, in Chicago?

Mr. Jenks: I will object to this, as immaterial to the issues in this case. It has nothing to do with the questions involved here.

The Master: Is this the same kind of case?

Mr. Robbins: Yes. It is rebuttal of that evidence taken before you before.

158 The Master: He may answer.

A. Whenever we buy the grain any place, we immediately hedge it in some of the markets, principally Chicago.

Mr. Robbins:

Q. Describe what you do to hedge it?

A. We put out bids every afternoon subject to acceptance up to a certain time, which varies according to the location.

Q. Bids out in the country?

A. Out in the country. Parties in the country send us telegrams accepting our offers The moment—Well, I won't say the moment we receive those, but sometimes, usually at the same time, and sometimes an hour later, or two or three hours later or possibly a day or so later, we go into the Chicago market and sell it for future delivery—hedge it.

Q. In the pits? A. Yes, sir.

Q. What kinds of grain do you do that with?

A. Wheat, corn, oats, rye, flax seed. We have at times done it with barley, but there is very little future trading in barley.

Q. Then what next happens? I am asking you to describe the course of business?

A. The grain is bought sometimes five days shipment, sometimes ten days, sometimes twenty days. Sometimes it is bought to be put into our corn cribs, or so that we can hold it in the elevators in the country. If we bring it to Chicago, or take it to Milwaukee or Kansas City, we may sell it out as soon as we get it there to some mill or some foreign buyer—some eastern buyer, feeder, and whenever we make a sale, we step into the pit and buy in our option, our hedge, or, again, we will bring it to Chicago and put it into our cleaning house and clean it, and make it into contract grade, and put it into the different elevators, and when the time of delivery comes around for the months we have held the stuff over, we deliver it out on the market.

Q. On the contracts you have described as hedged contracts made in the pit?

A. Yes sir, and some times when we sell the stuff to an importer, we step into the pit and buy back our hedge.

Q. How do you sell it to the exporter, by the cargo, or how?

A. Cargo, or so many bushels, 50,000, or half a million, or whatever the case may be.

159 Q. Does it happen sometimes that you sell the grain before maturity of the contract?

Mr. Jenks: I object to the question, as leading.

The Master: He may answer.

A. Very often we sell our grain before the contract matures.

Mr. Robbins:

Q. Before your contract of sale matures? A. Yes sir.

Q. Are you able to tell what quantity of grain you have delivered upon contracts for future delivery, made by you, upon the Chicago Board of Trade, by way of hedge, in the manner you have described, during the last year.

Mr. Harkless: Delivered where?

Mr. Robbins: Delivered in Chicago—can't deliver anywhere else under those contracts.

The Witness: I will tell you the amount of grain which we have actually delivered and collected the money on on future deliveries, but I can't give you the amount that we have received on the delivery board and put right out again. We have no records of that.

Q. Give us the figures that you say you have of the grain that was delivered and paid for by you—received by you?

A. That we received the money?

Q. Yes?

Mr. Harkless: Delivered where?

The Master: Chicago, he said.

Mr. Jenks: That is not the question. He proposes to answer what he received the money on, not what he delivered.

Mr. Robbins: Q. Deliveries in Chicago, upon which you received the money, and upon contract of sale in the Chicago market?

Mr. Harkless: On the hedging deals?

Mr. Robbins: On the Chicago Board of Trade?

160 The Witness: Let me tell you what I am going to answer, and then you can see if it is a proper answer. I am going to tell the amount of grain that we actually delivered, on sales for future delivery on the Chicago Board, that we made on the Chicago Board of Trade, and we fulfilled those sales on the Chicago Board of Trade, and delivered them according to the custom, and for which we received the money.

Mr. Jenks: I move to strike out the answer.

The Witness: On the Chicago Board of Trade, regular delivery rules?

The Master: He is answering the question.

Mr. Jenks: I move to strike out what he said on the subject.

The Master: The motion is overruled. He may answer.

The Witness: Commencing May 1, 1901. Would you like it in detail for each month, or total?

Mr. Robbins: Q. Give it by the different grains?

A. Up to the end of March, 1902, we delivered a total of 3,004,000 bushels of wheat.

Q. Of wheat?

A. Yes sir, of wheat. From May 1, 1901, until the end of December, 1901, we delivered 3,195,000 bushels of corn, and from May 1, 1901, until the end of February, 1902, 2,480,000 bushels of oats, and from May 1, 1901, until the end of December, 1901, 1,039,000 bushels of rye.

Q. Making a total of how much in bushels for all the grain?

A. 9,718,000 bushels. The total amount of money that we received in pay for that grain is about $5,100,000. It may vary $20,000 or $30,000 from that, but very close to $5,100,000.

Q. Now, could you give us an estimate of what the volume of your business would be where you make these contracts for future delivery upon the Chicago Board of Trade and then sell the wheat before the maturity of those contracts, and then take in the hedge by counter trade upon the Board?

161 Mr. Jenks: I object to that question because it uses the words "would be" instead of the word "was" and "were."

Mr. Robbins: Make is "was."

Mr. Jenks: Q. Do you mean bushels or dollars?

Mr. Robbins: Bushels.

The Witness: Do you mean of the grain which we purchased and hedged in the Chicago market, and then afterwards sold the grain?

Q. Took in the hedge by counter trade on the Board of Trade?

A. That varies. Taking the last year I should say possibly 50,000,000 bushels. There have been years, that is, before the Armour Grain Company was organized and Armour & Company did the grain business, that it would run as high as 100,000,000 bushels, and varies according to the crops and amount of grain handled.

Q. Does the Armour Grain Company make any contracts for future delivery that are speculative in character on the Board of Trade? A. No sir.

Mr. Harkless: That is a conclusion.

Mr. Jenks: I move to strike it out.

Mr. Robbins: Q. Has the Armour Grain Company during its existence made any contracts for future delivery upon the Chicago Board of Trade that were not of the character you have described, that is to say, hedging?

A. Well, there have been times, say for instance, like yesterday, indications were for rain. We were putting bids all over the country. Yesterday afternoon, near the close, we sold two or three hundred thousand bushels of corn and oats, figuring that to-day when our bids went out we would get a lot of stuff. This morning while we bought some stuff we did not buy enough to cover it. So then we sent into the market and purchased back the stuff we had sold, expecting to make some purchases in the country.

Q. Except in that case does the Armour Grain Company make contracts for future delivery upon the Board of Trade, except by way of hedging?

162 Mr. Jenks: I object to that question as leading and otherwise improper.

(Previous answer and question read.)

The Witness: I would like to correct that answer. I said two or three hundred thousand. I don't know exactly how much we did sell. I don't attend to that end of it. We sold considerable. Instead of two or three hundred thousand we sold considerable, and then had to buy some of it back.

The Master: You mean the incident of yesterday, or that character of cases?

Mr. Robbins: I mean except in that class of cases.

The Master: The objection is overruled.

The Witness: We never make any trades for future delivery on the Chicago Board of Trade, but what we intend to deliver the grain and do finally deliver it or offset it by purchases.

Mr. Jenks: I move to strike out that answer as not responsive.

The Master: It may stay in.

Q. (Question read.)

Mr. Robbins: Q. Mr. Marcy, except for the purpose of hedging or anticipating purchases in the way you have described, does the Armour Company make contracts for future delivery upon the Chicago Board of Trade?

Mr. Jenks: I object to that question as leading and otherwise improper.

The Master: The objection is overruled.

(Question read.)

A. No sir. I might make one exception there—except where we make trades on commission for other people.

Mr. Robbins: I referred in my question to trades made for the benefit of the Armour Grain Company.

A. The Armour Grain Company do not.

163 Q. How long have you been in the grain buying business in Chicago, Mr. Marcy?

A. Ever since I have been a member of the Board of Trade, and that is 18 years.

Q. What is the effect of this right to hedge upon the Chicago Board of Trade upon the business of buying and selling grain?

Mr. Jenks: I object to that question as leading and immaterial to the issue in this case and otherwise improper.

The Master: Do you mean buying grain upon the Chicago Board of Trade or in the country generally?

Mr. Robbins: Buying and selling grain in the country generally.

The Master: You qualified him as an expert?

Mr. Robbins: Yes. He says he has been 18 years at the business.

The Master: He may answer.

Mr. Jenks: It calls for the mere opinion of this witness as an expert without any qualification being shown.

The Master: He has not been qualified very far, but that will go to the credibility more than anything else. He may answer.

The Witness: The system of hedging is absolutely necessary to the whole grain trade. I mean by the grain trade the

cash handlers, the exporters, millers, terminal elevator people. I mean by that people who operate elevators at terminal points and carry big stocks—country elevator people. I mean by that people who operate small country elevators through the country, buying from farmers and carrying their stuff in their cribs. This system of hedging is absolutely necessary in order to protect themselves against fluctuation of the market. Take 12 or 15 years ago, the margins in handling grain were a great deal wider than they are now from the farmer to the consumer, and 20 years ago they were still a great deal wider. Take to-day the grain is moved from the farmer to a foreign market on a margin of probably a cent and a half to 2
164 cents a bushel, covering all the commissions in between.

Ten years ago that margin was anywheres from 5 to 8 cents, and 20 years ago I presume it was 20 or 25 cents a bushel. At that time this heavy trade all through the West, the cash handlers did not hedge, but as they began hedging then they were able to work closer, paying more money to the farmer and selling cheaper to the other side, and to the mills, bringing their margins closer.

Q. You mean margins of profit?

A. Margin of profit. As the business now is so fine, the margins are so fine we must hedge and keep hedged every minute, otherwise it would break us up in business, and a great number of banks will now not loan money to a cash handler in any quantity unless he will show them or assure them that he is hedged all the time. There are quite a number of concerns now have in their by-laws that they must keep hedged—can't go away from that rule unless through a meeting of the stockholders. Other concerns make it an ironclad rule without having it one of their by-laws—keep hedged every minute, and the bankers will ask every little while if you are hedged up, and shut off a man who is not, and a man who doesn't hedge in the grain trade in financial circles is considered an unsafe man. So for that reason we are compelled to hedge. We couldn't do our business without it, and the exporter when he sells anything abroad—he may sell to-night a large amount of grain. The first thing he does to-morrow morning is to rush into the Chicago market and buy an option. Then he has protected himself within five or ten minutes against these sales that he has made the night before. Then he proceeds to look around to see where he can buy the cash grain. He may buy it in Canada, Galveston, Newport News, Baltimore, or Philadelphia. The moment he makes that purchase to fill his foreign sale, then he sells out the wheat to the purchaser in the Chicago market. The Minneapolis mills work very much in the same way. A Minneapolis mill will go along and happen

to get a very large demand for their flour from abroad,
165 and may sell a great many thousand bushels. They can not buy cash wheat that day because the receipts are only two or three hundred cars, and they have probably sold flour enough to consume a million bushels. They immediately put an order on the Chicago market to buy enough wheat for future delivery to protect this sale of flour. Then as fast as they buy their cash wheat in Minneapolis, or Duluth, or wherever they are buying it, five or ten or twenty thousand bushels at a time, they sell it—sell out their option in the Chicago market, and if they were not able to do their hedging in that manner they couldn't do the business as close as they do, and the volume.

Cross-Examination

By Mr. Jenks:

Q. Mr. Marcy, you have been a member of the Chicago Board of Trade for 18 years?

A. Pretty near—within a month or two.

Q. With what house during that time have you been connected?

A. H. W. Roger & Bro. I was with them for about 11 years, and with Armour & Company and the Armour Grain Company about twelve years.

Q. What was the business of Roger & Bro.?

A. They did a general receiving, commission and merchandising business in grain and seed.

Q. Is that a Chicago firm?

A. Yes, sir, one of the oldest firms in Chicago.

Q. Was their business principally commission or otherwise?

A. Principally commission.

Q. Dealing for whom?

A. Different western dealers, eastern seed people—eastern and western linseed oil people.

Q. Were their customers what are known as speculative customers?

A. Well, that I couldn't say. They had a great many customers that traded in futures, but I think practically all of their customers were handlers of grain.

166 Q. What has been the business of the Armour Grain Company?

A. Grain merchants, elevator men and at times we have had a certain amount of commission business, but very small.

Q. Does the Armour Grain Company own and operate elevators? A. No sir.

Q. Does it operate elevators?

A. I will correct that. The Armour Grain Company do operate elevators.

Q. How many? A. Five.
Q. Where are they located? A. Chicago.
Q. All of them? A. Yes sir.
Q. Do they operate or control any grain elevators outside of the city of Chicago? A. Yes sir.
Q. I mean by control, control the operation? A. Yes, sir.
Q. They do now? A. Yes, sir.
Q. It is a little mixed as to what that last "Yes" means?
A. They control them.
Q. Whether they do or do not?
A. They control and direct the operation.
Q. Of how many elevators outside of Chicago?
A. One at Buffalo, three at Milwaukee, about 90 in the country, and also in addition to the 5 in Chicago, five—
Q. More? A. Five more in Chicago.
Q. That is ten that they control in Chicago? A. Yes, sir.
Q. Now, in the country the 90—is that what you said?
A. About 90, yes, sir.
Q. About where are those elevators located?
A. Wisconsin, Illinois, Iowa, and some in Minnesota.
Q. The business of the Armour Grain Company is largely to handle the actual grain, is it? A. Yes sir.
Q. Can you give us an idea of the amount of grain that that company has purchased in the Country and actually received and paid for during the past year? Now, I want
167 to couple the receipts and the payments together. I want the actual receipt and actual payment for the same stuff that they received.
A. I should think that we probably handled 50,000,000 bushels.
Q. That is, you would think you actually bought and paid for 50,000,000? A. Bushels.
Q. And received 50,000,000 bushels?
A. We receive it when we pay for it.
Q. Did the Armour Grain Company actually receive the grain, the 50,000,000 bushels?
A. These different elevators that we control.
Q. Received it? A. Yes sir.
Q. My question was how much the Armour Grain Company actually received and paid for?
A. Well, the Armour Grain Company pay for everything handled in Chicago. The Milwaukee Elevator Company, which is the name of the corporation there operating the Milwaukee elevators, pay for everything there. We control that company. I am Vice-President of that Company also. The country elevators are operated under another company, and they pay for all their stuff in their name.

Mr. Jenks: I move to strike out the answer as not responsive to the question.

Q. Mr. Marcy, I want to get at how much grain within the past year the Armour Grain Company as such has actually received and paid for?

A. Well, possibly,—oh, I would think 35,000,000 bushels.

Q. How much grain has the Armour Grain Company within the past year actually sold and delivered, that is, the actual commodity? A. Delivered in what place?

Q. Any place?

A. All that they bought except what they have on hand.

Q. And they have on hand how much?

A. That I could not say. Out stocks now are not very heavy.

Q. Is the Armour Grain Company a separate institution from what is generally understood here as the Armour Com pany? A. Yes sir.

168 Q. The Armour Company is a packing Company?

A. Armour & Company is an incorporation—packing company.

Q. The Armour Grain Company is a corporation or partnership? A. Corporation.

Q. And as a corporation it has been in existence how long?

A. About a year and a half.

Q. Previous to that then for ten years or more it was a copartnership, since you have been connected with it?

A. And also Armour & Company.

Q. Yes, but I separate the two—the Armour Packing Co.?

A. The Armour Packing Company is still another concern that formerly existed. That is a corporation.

Q. You have nothing to do with that, have you?

A. No, sir.

Q. And that has nothing to do with the grain business, has it? A. No sir.

Q. In the past year how much grain has the Armour Grain Company contracted to buy? A. Whereabouts?

Q. Anywhere—everywhere, either for future delivery or otherwise? A. I couldn't say.

Q. Can you make a guess?

A. I couldn't answer that question because it is so—well, buying cash grain and selling it, taking in our hedges, buying one month and selling another month to make the carrying charges going back and forth, it is impossible. I wouldn't want to make a guess. The reason why I can guess on the amount of grain we bought is because I know about how much grain we handle—kind of got those statistics, you see.

Q. I don't know anything about this business, and it is easy for me to get mixed up on the answers of the witness. I wish you would make as good a guess as you can and see if it wouldn't be up in the billions of bushels?

A. No, sir. It would be somewhat more than the
169 amount of grain, cash grain we actually handled, but no such amount as that.

Q. Think not? A. I know not.

Q. Now, I am stupid. I don't understand about this hedging business. What sort of a thing is a hedge in the parlance of Board of Trade men?

A. When you have some cash grain on hand and you sell the future against it. Say for instance, we have 5,000 corn on hand, and we sell 5,000 May or July corn against it.

Q. Then what do you do with your 5,000 corn that you have got on hand?

A. Bring it into Chicago and deliver it on our May sale when May comes, or we may sell it out to feed men or to New England men, exporters, or glucose company, somebody who may come in and buy in our 5,000 May corn.

Q. Where do you have it? See if I understand a hedge now. You have 5,000 bushels of corn in Iowa. You come on the Chicago Board of Trade and you sell it as a hedge?

A. For future delivery.

Q. For future delivery. Now, don't you hold that corn and keep it intact to deliver it on that hedge sale?

A. Not always. If I can sell that corn out to some consumer and get a better price for it than what it will net me if I deliver it on my May sale I sell it out and buy back my May.

Q. And if you sell it out when your hedge contract matures how do you have the grain to fill that contract?

A. I have bought it in from somebody else.

Q. Bought what? A. 5,000 May corn.

Q. Then you take it from the other fellow to fill in your hedged contract?

A. That is it, or I may buy it from the man to whom I sold it.

Q. What I am getting at is this hedging contract? You have to deliver the grain on that, haven't you? A. Yes sir.

Q. Every time? A. Yes, sir.
170 Q. Whether the sale is a hedge or anything else?
A. Yes sir.

Q. You have to deliver it—deliver the stuff? A. Yes sir.

Q. And now when you made a hedge contract and sell because you have the actual commodity on hand, and instead of keeping that commodity to deliver on the hedged contract when the contract matures, you ship the stuff off to New York or to Europe. Now, when you ship it off to New York or to

Europe, and sell the actual commodity, what do you do with your hedge contract of sale?

A. Go into the pit on the Chicago Board of Trade and buy back 5,000 of corn.

Q. Then you have got a contract of sale for future delivery— A. Contract of purchase.

Q. And a contract for the purchase and the delivery of the same commodity? A. That is right.

Q. How do you close those two contracts on the Board of Trade?

Q. Sometimes by settlement, offset or sometimes by delivery.

Q. How is that settlement or offset? How do you do that?

Mr. Robbins: I think I will object to that. I think we have had that over and over ad nauseum. I object to that for the reason that the evidence already taken, and by stipulation the evidence of the defendants in this case has time and time again gone over this question, and that it is not proper cross-examination, and it is not necessary to pad the record on that subject every time a witness is put upon the stand.

The Master: Your proposition is that this is rebuttal cross-examination. This being rebuttal therefore cross-examination in rebuttal must be confined to rebuttal matter.

Mr. Jenkes: The Master knows what the witness has testifid to, and this a question that was called out from him an explanation of what he has already testified to. I don't want to tell him or Robbins—

171 The Master: Let him ask two or three questions and we will see where they go. You may answer that question.

(Question read.)

A. We have a sale, we will say, to a firm on the Chicago Board of Trade, 5,000 bushels May corn. To-morrow when we sell our cash grain we buy 5,000 May corn from some firm on the Board of Trade. The trade stands open until delivery day, when the party from whom we purchased delivers it to us, and we deliver it to the party to whom we had it sold or if before that delivery day it developes that the party to whom we sold the 5,000 May corn happens to have 5,000 of May corn sold to the party from whom we purchased, or some intermediate party, who has it sold to the party from whom we purchased we find that it simply makes a ring. The whole matter is then settled up and whatever difference there is is adjusted.

Mr. Jenks: Q. Difference in what? A. In the price.

Q. How is it adjusted? A. Through the Clearing House.

Q. How? Who buys and how do they get any money out of it?

Mr. Robbins: The same objection.
The Master: He may answer.

A. The money is paid by the parties owing money and collected by the parties having a profit in the trade.

Mr. Jenks: Q. Now, if somebody owes you the money he sends his check to the Clearing House, and you get from the Clearing House his check—its check for the amount, do you?

A. Yes sir.

Q. That is the way you settle that. Now, suppose you have got the actual stuff. Say you have got 100,000 bushels of corn in the country. You don't want to hold it there and your only object is to sell it and make some money out of it, and you go on the Board of Trade after you have got that corn in store and you sell for May delivery 100,000 bushels of corn,
172 and then you ship that corn off east and sell it. I want to know what good that hedging contract is here on the Board of Trade, and how that hedge contract enables people to do business, and I want to know why the banks require the hedging contract to be made?

A. To protect it from fluctuations in the market.

Q. How does that protect it?

A. For the reason it makes no difference whether the market goes up or down.

Q. Why?

A. Because they have the cash grain on hand. If the market goes up they will make money on that, and if they have the future sold they lose money on that, so that they are even when they get through. They make it on their cash and lose it on their option. Vice versa, in case the market goes down.

Q. Let's see about that. Suppose you have 100,000 bushels and make a hedge sale, and then ship the 100,000 bushels east and sell it. You still have your hedge sale here. Now, suppose after you have sold it the market goes up, so that instead of corn being worth 30 cents it is worth 50 cents. I want to know how you have made anything on that deal if you have still got to go and buy grain in on the Board of Trade?

A. The transactions are not made that way.

Q. Why?

A. They are made this way: We own 100,000 cash corn some place. We have an option hedge against it. Some man in the East makes us a bid for 100,000 cash corn. We have his telegram and before we sell it or at the moment we sell it we go into the pit and buy in our 100,000 bushels, and we don't sell it until we are very sure we can buy it. There are times when we may get left for one-eighth or one-quarter of a cent a bushel. Other times we will make it—just as we happen

to catch the market. That is part of our business to trade so as not to get caught—keep close watch.

Q. Your only object is to sell the corn you have on hand? In order to make that sale you go on the Board of Trade and make a purchase? A. No sir.

173 Q. Isn't that the idea?

A. No. We buy 100,000 bushels cash corn. As soon as we buy it we sell 100,000 bushels for future delivery the same month. We sit still. If the market goes up we make the money on our cash corn and lose it on our option. If the market goes down we make a profit on our option and lose it on our cash. One of these days an eastern man wants some corn. He buys that 100,000 bushels of corn for cash. The moment he buys it we go into the pit and buy it back—buy back our 100,000 bushels that we had sold for future delivery. We have sold out our cash corn and we are all cleaned up with the exception that we have open trades that either have to be settled by rings or when delivery day comes, delivered.

Q. Is that rule, the rule of hedging trades settled?

A. Well, it depends upon the conditions of the market. There are some times that a big bulk of the trades have to be delivered, and then again things are pretty well evened up, and it will ring up pretty close.

Q. Is that the rule? Which way is it?

A. As far as we are concerned as a rule a large amount of stuff is delivered.

Q. Then if you have 100,000 bushels of corn on hand which you want to sell, in order to sell it you go and contract to buy 100,000 bushels more? A. No sir.

Q. Then you have a million on hand. That is the way that is, isn't it? A. No, sir.

Q. I want to know what you sell it for on the Board of Trade if you have to buy it back again on the Board of Trade?

A. To hedge our cash corn.

Q. What good does it do you if you have to receive that stuff and deliver it on the Board of Trade? Where is there any gain in the hedge?

A. Supposing you go and buy 5,000 cash corn out in Iowa to-day at 50 cents, and it costs you 10 cents to bring it

174 to Chicago. That is going to cost you 60 cents, and you can get 60 cents for your May corn. You sell 5,000 May corn at 60 cents. Now, you are leaving your corn in the country, cash corn, and you have your May sold. Now, you bring it in and deliver it. Now, instead of doing that, if you get a chance to sell this 5,000 corn you have out in the country to feeders, or sell it to go East, or some other place, so that it nets you more than it would to bring it to Chicago and de-

liver it on your May sale, you are going to sell it and going into the pit and buy in your 5,000 May corn.

Q. Why do I want to buy in for?

A. Because you have it sold and you must fill your sale. If you haven't the corn to deliver it you must get from somebody who has.

Q. Why do I want to go around and get corn for if I am going to sell 5,000 bushels more corn on the Board of Trade, and buy it back on the Board of Trade? Why don't I take those two deals? A. What two deals?

Q. The sale and purchase on the Board?

A. You would be simply speculating. You wouldn't have any cash corn.

Q. Why not? I would take it in. I would take it in on my purchase contract and I would deliver it out on my sale contract. That would be cash, wouldn't it?

A. I can't quite understand you?

Q. I don't see what you make those hedge deals for, merely to get rid of 5,000 bushels of corn that you have on hand.

A. If you will allow me to ask you a few questions, then you can understand it.

Q. I don't know anything about it?

A. I think you will, if you will answer a few questions.

Q. Just wait a minute. I am not here answering questions, but I will ask you this: Do you have cash corn on hand and ship it somewhere, and sell it, and you have made a sale
175 of corn as a hedge on the Board of Trade when you go and make contract purchases to fill that hedging contract, do you do it through the same broker or do you do that yourself? A. Some times brokers and some times ourselves.

Q. Now, when you give the order to the broker do you give him an order to sell—to buy in 5,000 bushels of corn to fill that sale order of 5,000? A. If you do it through a broker.

Q. Then what does the broker do? A. Buys it.

Q. He buys it and then how does he close the transaction with you? A. Account of purchase and sale.

Q. And that ends it so far as you are concerned where you do it through a broker?

A. Yes, sir. He charges me a commission for it.

Q. You pay it? A. Yes sir.

Q. Where you have made a hedging deal through the broker that hedging deal is always a sale, isn't it? A. Not always.

Q. Where you are hedging against the actual stuff you have on hand?

A. When we are hedging against the stuff we have on hand it is a sale, but very often we will buy something against some of our foreign sales.

Q. I am only talking about the stuff you have on hand. Now, you have the stuff on hand and want to protect yourself. You order your broker to sell a like amount of the same commodity for future delivery and he sells it. Then you take the stuff you have on hand and sell it somewhere else. Then you order your broker to buy only stuff that you have sold as a hedge, and he does it, and immediately after he does that, then he closes the contract with you—closes both transactions with you and the difference is paid then? A. Yes sir.

Q. Between the selling price and the purchase price?

A. Yes sir.

Q. Now, the only object that you have in making a
176 hedging sale is to insure yourself that you will get at least that amount of money for the cash stuff that you have on hand? A. Yes sir.

Q. That is the object of it? A. Yes, sir.

Q. Now, you sell that stuff after a while and just as soon as you sell it somewhere else you want to get rid of this contract sale you have on the Board, and you get rid of that by buying in a like commodity for the same delivery, don't you?

A. Yes, sir.

Q. Always? You don't buy it in for any other delivery?

A. No, sir.

Q. When you buy it in as a rule you close up both of those transactions right off, don't you?

A. If it is done through the broker he will close up that trade and stand in the gap himself on this open trade.

Q. Have you been doing it through the broker—if you don't do it through the broker but do it yourself as a member of the Board of Trade, you ring it up through the Clearing House?

A. Ring it up or deliver it.

Q. You ring it up as soon as you can, don't you?

A. Sometimes, yes, sir, and some times not. If the stuff will ring up probably ring it. Other times we will refuse to ring it, insisting on the delivery.

Q. Have you refused to ring anything in the past month where it would ring?

A. No. We refused a good deal in December.

Q. In the past month? A. No.

Q. Have you rung anything in the past month?

A. I presume so.

Q. In the past two months have you refused to ring anything? A. Not since December that I can remember.

Q. Have you rung up anything since December?

A. Yes, sir.

Q. How much? A. That I couldn't say.

Q. About how much in bushels?

A. I couldn't say, I couldn't guess.

177 Q. Millions of bushels?

A. Quite a good amount, but no big amount.

Q. It would amount to millions of bushels, wouldn't it?

A. I couldn't say. It amounts to a good deal, but I couldn't say how much.

Q. Now, during some time you received and paid for 3,004,000 bushels of something?

A. No, sir, I delivered and collected for it.

Q. 3,004,000 bushels? A. Yes, sir.

Q. Where did you make that delivery?

A. On the Chicago Board of Trade.

Q. In what way did you make it? Was it by notice?

A. Some of it, and some of it by invoice—mostly by notice.

Q. How much of that stuff did you actually deliver?

A. All of it.

Q. How much of it came back to you? A. I couldn't say.

Q. About how much?

A. It would be impossible for me to say; whatever came back we immediately delivered it right out again.

Q. You say you actually delivered this and you also say it was delivered by notice? Now, do you mean that you actually delivered this stuff or the warehouse receipts for it?

A. Yes, sir, and received a check. We have a system—

Q. I don't care about the system.

A. I will explain what you are trying to get at.

Q. Did you receive checks to pay for 3,004,000 bushels?

A. Yes sir.

Q. The actual sale price of it? A. Yes, sir.

Q. Were those warehouse receipts receipts from elevators controlled or operated by the Armour Grain Company?

A. Some of them and some of them not.

Q. And where they were not were they warehouse receipts for the purpose of getting the grain into your own warehouse?

A. I don't quite understand that question.

178 Q. Where they were not—where you delivered warehouse receipts not on your own warehouses, were those deliveries made for the purpose of getting warehouse receipts for grain in your own warehouse, or to get the grain into your own warehouse? A. No, sir.

Q. None of those deals were for the purpose of getting grain into your own warehouses? A. No, sir.

Q. Now, you haven't told me yet how much of that stock was delivered by notice, which notice came back to you?

A. That I am unable to tell you. No doubt some of this stuff that we delivered different people delivered it back to us and we redelivered it again, but this amount that I have given you is the amount that we actually delivered and received checks for. In addition to that we had a whole lot—a large

amount of, some of which was other peoples deliveries and were delivered to us, and we simply endorsed the notice and delivered it to the parties to whom we had stuff sold.

Q. You didn't do that unless it was done at the same time, did you? A. How do you mean?

Q. The notice didn't get back to you at the office?

A. No, sir, on the delivery board, where deliveries are made.

Q. Right there where you are in the ring and passed the notice around from one to the other?

A. Not a ring. It is delivery. We have a certain hour for every delivery. We all go to that delivery place at a certain hour.

Q. How do you know who you are going to deliver it to?

A. We know to whom we have stock sold.

Q. I want to know how you give notice to one man and he comes around to you and you then give it to another man? You know how much you had to deliver, don't you, when you go there? A. Yes sir.

179 Q. Suppose you have delivered 10,000 bushels. Do you go there with notice that you have 10,000 bushels to deliver and pass that to the man to whom your delivery is to go? A. To whom I have the stuff sold.

Q. All of these notices are in 5,000 bushel lots?

A. Some of them 1,000.

Q. I thought they did not deal as low as that on the board?

A. Yes, sir.

Q. They do, eh? A. Yes, sir.

Q. Now, we will say you have 10,000 bushels to deliver and you have to deliver that to ten different people. When you go on the Board how many notices do you have?

A. If sold in thousand lots we would have ten notices.

Q. That is all you have to deliver?

A. If that happens to be all I have sold or all the wheat I want to deliver.

Q. Now, you deliver ten notices and they come around to you. How do you deliver those notices after that to anybody else? A. They may not come to me.

Q. Then you don't deliver them to anybody else?

A. Possibly not, and possibly I may.

Q. Suppose they did come to you, how do you deliver them to anybody else after you have made all your deliveries?

A. Endorse the notice.

Q. But you haven't any grain going to anybody else?

A. Then I don't deliver it—take it and pay for it.

Q. You start with the notice. You have the stuff to start with. You go there to deliver it? A. Yes, sir.

Q. You do deliver it and the notice comes back to you. You have already got the stuff. You don't take it and pay for it, do you?

A. Yes, sir. That don't happen very often for the reason that if I have 10,000—

Q. I don't care why. It does come back to you some times, doesn't it? A. Sometimes it does.

180 Q. Now, we will suppose that that notice has gone through three different hands before it gets back to you. You start with the commodity. The notice comes back to you and you still have got the commodity. How do you settle with those three different people through whose hands that notice is passed?

A. Settle on the basis of the delivery price.

Q. How do you do it? A. Through the clearing house.

Q. How much do you give them?

A. The difference between the price we have sold or purchased from them and the delivery price.

Q. And you pay all the money to the clearing house and these different people go to the clearing house and get the amount that is coming to them?

A. Yes, sir, or pay it into the clearing house, and if it is coming to me, I get it.

Q. And what you get and what is paid there is just the difference in the purchase and sale price, isn't it?

A. Yes sir.

Q. There are rings there on deliveries, aren't there?

A. No, sir.

Q. What? A. No, sir.

Q. In that case I put to you, that is a ring, isn't it?

A. No, sir.

Q. What is it? A. It is a delivery.

Q. What is a ring?

A. A ring is where you don't deliver anything.

Q. What have you delivered in here where you start out with the notice and the notice comes back to you? You start with the grain in the warehouse and end with it in the warehouse?

A. The notice is the grain. It is the same as if the warehouse receipt is attached to it? A. It is the invoice.

Q. The warehouse receipt is not attached to it?

A. No, sir. That lays waiting for the certified check to be brought.

Q. Suppose that the notice is the same as the warehouse receipt, you would treat the warehouse receipt the same

181 way? You would deliver it up and it comes back to you. You call that delivery to each man? A. Yes, sir.

Q. And you say each man pays for the stuff?

A. Yes, sir, draws his check.

Q. But as a matter of fact neither of them pays for the stuff and they merely settle on the differences between the purchase and sale price, don't they?

A. On the delivery notice.

Q. Where it comes back to you, where it is a notice or warehouse receipt, nobody draws a check for the whole amount?

A. In such cases as that it is simply settled, just the difference between the price and the delivery price.

Q. And it is settled up the same way that you ring up transactions before delivery day? A. No, sir.

Q. Through the clearing house?

A. These are just the same as the ring, adjusted the same.

Q. That is what I am talking about, and you settle it the same way. You have a clearing house sheet that you send in every morning, haven't you? A. Yes, sir.

Q. Now, if the day before you had made a delivery around this circle by notice, how would you get the money, if money was coming to you? A. Through the clearing house.

Q. The other fellows make the same sheet for the clearing house? You make your own and you claim so much money coming from each one of these men that owes you in this ring where you have made a delivery by notice, don't you?

A. Yes, sir.

Q. Now, coming what time was this 3,400,000 bushels delivered by you? A. The wheat?

Q. Yes? A. May, 1901 to the end of March, 1902.

Q, That was 10 months? A. Eleven months.

Q. Now, was this stuff ever delivered on contracts for future delivery? A. Yes, sir.

Q. And all of those contracts made on the board of trade?

A. Yes, sir.

182 Q. During that time will you make the best estimate you can of all of the stuff that you had contracted to buy for future delivery during that 11 months?

A. I wouldn't make a guess because I never had any statistics taken off so as to put the thing in my mind. It would be too wild a guess.

Q. Wasn't it millions of bushels that you had contracted to purchase? A. Millions.

Q. During that 11 months? A. Yes, sir, some millions.

Q. Wasn't it billions? A. No, sir.

Q. What would be your best estimate of the amount?

A. I couldn't make a guess—good sized amount because handling all the grain we do are bound to be trading more or less.

Q. Are you a speculative house, or do you intend to deal in the actual stuff? A. Intend to deal in the actual stuff.

Q. Do you know how many members of the Board of Trade there are? A. In our firm?

Q. No, how many members? A. All told?

Q. Yes? A. No, sir, I do not.

Q. Now, covering what time were the 3,195,000 bushels delivered?

A. May, 1901, to the end of December, 1901. That is corn, 3,195,000 bushels corn.

Q. Beginning of May? A. Yes, sir.

Q. Seven months or 8 months? A. Eight months.

Q. Did that run up to the first of December?

A. First of January.

Q. Was there any corner in corn during that time?

A. Yes, sir.

Q. Phillips running his deal through? A. Last May.

Q. Any corner along towards December? A. No, sir.

Q. Now, how much of that stuff was delivered through your own warehouses? A. That I couldn't say.

Q. Can you state about how much?

A. No, I couldn't because at times we have a good deal of grain in the warehouses all controlled by ourselves.

183 When carrier charges are good and we can make interest on our money we carry stuff in other houses.

Q. Can you tell how much of that stuff was actually—the stuff itself was actually delivered by you in warehouse receipt? A. I don't quite understand what you mean?

Q. How much corn did you actually deliver? I don't mean by delivering notices. How much actual corn did you deliver during that eight months?

A. We delivered all of this—delivered warehouse receipts for all of it.

Q. How much did you deliver by notice?

A. That I couldn't say, probably the bulk of it.

Q. And none of those notices came back to you?

A. There may have been some of them, very few though.

Q. You say you delivered all this stuff. If the notices came back to you you didn't deliver it?

A. That is right. None of those notices came back to us.

Q. Covering what period of time did you deliver 2,480,000 bushels of oats?

A. May 1901 to the end of February, 1902. That would be 10 months.

Q. How much of that did you actually deliver?

A. All of it.

Q. None of those notices came back to you? A. No, sir.

Q. And it is the same way as to the rye? A. Yes, sir.

Q. None of the notices came back to you? A. No, sir.

Q. Of that 9,718,000 bushels of grain, how much of that was the result of hedging transactions? A. All of it.

Q. All of it? A. Yes, sir.

Q. You bought and sold nothing except by way of hedge?

A. That is the way we do all our business.

Q. What? A. We only trade just for the sale of hedging.

Q. That is all you do? A. Yes, sir.

Q. Now, what was the total amount of hedging trades that you did covering those periods, 10 months?

A. That I couldn't say.

Q. You don't know anything about it?

A. No, sir, because I never had anyhing to impress it on my mind.

184 Q. Do your books show? A. Yes, sir.

Q. How large a book is it that would contain that?

A. Very large.

Q. How long would it take you to make an estimate of the amount in bushels of hedging deals that you had on hand coveriny that period of time that was covered by the delivery of 9,718,000 bushels?

A. Oh, I don't know just how long it would take.

Q. You can do it? A. I suppose they could do it.

Q. I want to know that and I will ask you to do it. Where are your books? A. In the office.

Q. In the offices down town? A. Yes, sir.

Q. Can you do that so as to tell us pretty soon?

A. I don't believe I could.

Q. How long would it take you? A. I couldn't say.

Q. You can look at them with that idea and give us a pretty good guess as to the amount, can't you, in a short time?

A. I don't know how long it would take.

Q. Well, I will ask you to do that. Now, every one of these deals that you had were hedge deals and therefore you had 9,718,000 bushels of wheat, corn, oats and rye actually in your possession stored somewhere, didn't you? A. Yes, sir.

Q. And that is what you started with?

A. I don't quite understand.

Q. You started with the actual stuff in your possession?

A. I don't understand what you mean by started with.

Q. The hedging deals were originated because of the fact that you had the commodity in your possession at the time?

A. I may not have had this same stuff that I delivered at the time I made the hedges.

Q. No, but I will ask you another question. Were these deliveries all made on hedge contracts of sale you had entered into on the Board of Trade? A. Yes, sir.

Q. And those deliveries were all made on the Chicago Board of Trade? A. Yes, sir.

Q. You haven't counted in the deliveries of cash stuff which you had on hand to get this 9,000,000?

185 A. The cash stuff, how?

Q. That you had on hand—that you made the hedging deals to hedge against?

A. I don't understand what you mean.

Q. You had the actual commodity on hand and you went on the board and made hedging sales and then you sold the actual stuff that you had on hand. Principally you sold it in some other place, didn't you? A. Some of it.

Q. Well, principally, and the most of it didn't you sell somewhere else? A. No, I won't say that.

Q. You did within ten months sell wheat, corn, and oats outside of the Board of Trade in Chicago in how many different places? A. Oh, sold it in a good many different places.

Q. What was the amount that you sold?

A. That would be pretty hard to tell because I have sold on the Chicago Board of Trade a large amount of cash grain and collected for it right here and sold it right here on the Chicago Board that is not included in this—good many million bushels.

Q. Do you know what the question is?

A. I don't quite understand the question.

Q. I want to know how much you delivered to other places than Chicago? A. You mean sold?

Q. Sold and delivered? A. In other places?

Q. Yes?

A. That I couldn't say. You mean where we had sales for future delivery in other markets and delivered the grain?

Q. No, I don't. I mean where you had grain on hand and you made a hedging sale on the Board of Trade here of that grain and afterwards you sold that grain somewhere else; I want to know how much there was of it that you sold somewhere else? A. Beside the Chicago Board of Trade?

Q. Yes? A. That I couldn't say—a good deal.

Q. It was a good deal more than 9,000,000 bushels, wasn't it? A. Well, I think, take all the markets, yes.

186 Q. What are the markets where you sold?

A. Well, we sell a great deal here on the Chicago Board of Trade to people agreeing to deliver at different places. For instance, we deliver at Buffalo or Erie, or Montreal, or Liverpool, Antwerp, or Hamburg or deliver at New York, just as the case may be; so that I don't know whether you can construe those sales as made in those markets or here.

Q. Where were the deliveries made?

A. Different places, sometime f. o. b. Chicago, and sometimes delivered at Buffalo, sometimes sift. the other side.

Q. Well, how much did you deliver at any other place than on the Chicago Board of Trade?

A. That I couldn't say off hand.

Q. Would it amount to as much as 40,000,000 bushels?

A. I should think, take the Milwaukee elevator company and our country line and ours, probably amount to I should think half of it.

Q. Half of what? A. Well, amount to 20,000,000 bushels.

Q. Twenty million?

A. Yes, sir, maybe amount to more. That is an off-hand guess. I really ought not to guess it because it is too much of a guess.

Q. I want to know how much you have been guessing at and what is actual facts?

A. Just what I have told you that I am guessing at I am guessing at, and what I have told you is the fact is the fact.

Q. Now, you have told us you had deals amounting to 50,000,000 bushels. You didn't tell me that?

A. I told you that we handled in the neighborhood of 50,000,000 bushels.

Q. And 9,000,000 bushels were delivered on the Board of Trade. If that be true how much was delivered somewhere else? It would be 40,000, wouldn't it?

A. The balance was delivered on the Chicago Board
187 of Trade, but not delivered on futures. Just how much has been delivered that way I can't say. I have sold the Glucose Company a large amount.

Q. You think the Chicago Board of Trade is a great institution, don't you? A. In some ways, yes, sir.

Q. Who asked you to make those figures that you have testified to? A. Mr. Robbins.

Q. When?

A. I don't remember, about I guess several days ago.

Q. How long did it take you to look up the matters so as to make those figures? A. It took a few days.

Q. Now, I will ask you to look up and see what amount of commodities you sold on the Board of Trade covering the same period of time that your present figures cover, for future delivery, as hedging transactions.

A. I would have to have somebody hire some extra clerks for me to do that. That is an awful big job, and I don't know as I would want to attempt to get it up.

Q. Can you bring the books here? A. No, sir.

Q. All of these transactions are shown in your ledger in 5,000 bushel lots, aren't they? A. No, sir.

Q. What? A. No, sir.

Q. How are they shown there?

A. Not shown in the ledger at all.

Q. In some book, or the option book?
A. No, we have books that keep track of the stuff.
Q. What do you call those books?
A. I don't know, I am sure; I am not the bookkeeper.
Q. What is the book that would show hedging sales?
A. I couldn't say.
Q. You don't know? A. No, sir.
Q. What is the book that would show hedging purchases?
A. That I couldn't say.
Q. What is the book that would show cash sales?
A. That I couldn't say.

188 Q. Did you make these figures yourself from the books, that you have testified to?

A. I took the young man and started at it and helped him figure it.

Q. From what book?

A. I don't know which book it was. He had some book; I don't know what he calls the book—the book they put the memoranda in—that he could tell from.

Q. Who kept that book?
A. We have three or four people that keep them.
Q. Do you keep them? A. No, sir.

Q. What you have testified to here, is that a matter of your own knowledge, or is it a matter that you got from the bookkeeper?

A. To a certain extent it is my own knowledge, and to a certain extent it is from the bookkeeper.

Q. Of your own knowledge you don't know anything about the quantities, do you, except that they were large?
A. I know very close to this.
Q. Do you happen to remember? A. Remember how?
Q. Remember pretty near what amount you delivered?
A. Yes, sir.

Q. Why can't you just as well remember what amounts you countracted for?

A. Because that is another proposition. Take the first of every month when we get ready to make our deliveries, we know about how much stuff we are going to deliver. It is a very important thing to us, and that happens to be something I watch pretty close, that end of it, and it is kind of in my mind so that when I look at these figures that the young man has made for me, I know they seem pratically correct.

Q. You know it is pretty near there somewhere?

A. Yes, sir. I could swear that these were practically the amounts. I couldn't swear these are the actual amounts, but I could swear it is pretty close to it, because I have it in my mind.

Q. How many bookkeepers have you there who can look up figures to see how much stuff you contracted to sell within the time covered by your present figures?

189 A. I couldn't say how many of them are able to work on it.

Q. How many bookkeepers have you?

A. I don't know as you can call them bookkeepers. We have lots of clerks.

Q. Do you know how many bookkeepers you have?

A. I think we have two.

Q. How many clerks have you?

A. I am ashamed to say I don't know. It is something I have very little to do with and I couldn't say.

Q. Have you a ring clerk?

A. Settlement clerk, yes, sir.

Q. Have you more than one?

A. I think there are two or three or four of the boys work at it. I don't know how many there are; there are several there that are capable of working on it if they have to. It depends on how busy they are.

Q. Do these settlement clerks go around and see when you can close deals on the ring?

A. I don't know whether our boy goes into the settlement room or not. He may and he may not, I couldn't say.

Q. Do you attend to that part of the business yourself at all? A. Which—the bookkeeper?

Q. The ringing up of deals and offsets? A. No sir.

Q. And matters through the clearing house, do you attend to them at all? A. No, sir.

Q. I think you have answered that you had no deals on the Board of trade at all except they were hedging deals?

A. Yes, sir.

Q. Is that right?

A. Practically so. I made an exception. I told you at the time we sold something, we expected to buy or bought something and we expected to sell and didn't happen to do it.

Q. Now, your option clerk could look at the pages of the book and tell in a short time the amount of commodities that you dealt in, couldn't he?

A. I don't believe he could do it in a short time. I suppose he could do it.

Q. What is his name?

A. That I couldn't say, as to which one of them would have that to do.

Q. Give us the name of all of the option clerks?

190 A. I don't believe that is a question that I have to answer.

Q. How many option clerks have you?

A. There are several of the boys that are capable of handling that end of the work. Just how many of them work on it depends according to how busy they are.

Q. Give us the names of those that work on it the most?

A. I don't believe I care to. I don't believe that is a question I have to answer.

Q. Why? A. I shouldn't think that I had to answer that.

Q. Why not? A. Because I don't think I ought to.

Q. Do you decline to answer it?

A. I don't know whether I do or not. I don't know whether I should have to answer it.

Q. Well, I will ask you to answer it—to give us those names—unless you will promise that you yourself will get those figures? A. Well, I won't promise.

Q. Well, then, give us those names. Do you decline to do it?

A. I am thinking. I don't know whether I do or not. I don't know whether I want to answer that question or not.

Q. How can you find out?

A. I will have to think the matter over.

Q. Have to ask somebody?

A. I may and may not. Then again I may ask.

Q. Who would you ask?

A. That is a question I won't answer.

Q. You don't answer the other?

A. I don't know. I may answer the other, but I want to think that over a little.

Q. Now, you have said, Mr. Marcy, that hedging trades on the Chicago Board are necessary in the grain business. I want to know why it is not necessary for one dealing in actual grain, buying it and receiving it, selling it and delivering it, and shipping, I want to know why it is necessary to have any hedging deals on the Board of Trade?

A. In order to protect themselves against a loss by fluctuations in the market.

Q. That is the only reason you can give? A. Yes, sir.

Q. Do you consider a hedging sale as insurance?

A. Yes, sir.

191 Q. Now, we will suppose that you have a commodity on hand and you make a hedging sale. You ship that commodity to Europe that you have on hand. You hold it in Europe and don't sell it, still hold it there, what do you do with your hedging sale here on the Board of Trade?

A. Sometimes leave it out—leave the hedge still out, other times we might take it off.

Q. Take it off how? A. Buy it in.

Q. What would you do when you leave it out?

A. Leave it out and hold the grain over in the foreign port. When we sold the grain over there take the hedge off.

Q. Take it off how? A. Buy it in.

Q. That you could do if you did not hedge it as a hedge, couldn't you? A. Yes, sir.

Q. Now, in the transactions on the Board of Trade I want to know what this stuff you had on hand in the beginning has to do with your hedging deals?

A. To protect us against the fluctuation of the market.

Q. If you make a sale on the board and then buy the stuff in on the board, what has this stuff that you had on hand to do with that?

A. It has a good deal if the market happens to fluctuate on it and you don't have it hedged.

Q. I would like to know what the stuff you have on hand has to do with the contracts of sale and purchase that you have on the board?

A. You went all over that here a while ago, three times.

Q. But I did not find out what it has to do with it.

A. I can't explain it any more thoroughly than what I have

Mr. Jenks: No, Mr. Robbins, I want to get the amount of stuff that they dealt in by way of hedge on the Board of Trade during this period that he has testified about.

Mr. Robbins: Get it.

Mr. Jenks: Then we will have to go before the Judge. Where is the Master?

192 Mr. Harkless: He has not refused to tell the names yet.

Mr. Jenks: Q. Have you now considered it so as to tell us the names of the settling clerks? A. Not yet.

Cross-Examination

By Mr. Harkless:

Q. You call yourselves a cash grain house, don't you?

A. Very largely cash grain house, elevator firm.

Q. What do you mean by cash grain house—as distinguished from what?

A. Well, we handle a good deal of cash grain.

A. As distinguished from what?

A. Well, there are certain firms that are simply commission firms.

Q. Cash grain houses?

A. Some of them and some of them not.

Q. What other kind is there besides a cash grain house?

A. Commission firm.

Q. It may be cash grain, may it not?

A. Yes, sir, but not so large in extent.

Q. Does the amount of it determine the question as to whether they are cash grain houses or not? A. Yes, sir.

Q. As to whether speculative business prevails above your cash transactions, isn't it? A. Yes, sir.

Q. Then there is a cash grain house and a speculative house?

A. Yes sir.

Q. Now, as a cash grain house according to your testimony here on your hedge deals you have only delivered about one-fifth of the amount you have bought on the Board of Trade?

A. That is not what I have said.

Q. Didn't you say that?

A. No, sir—that we handled in the neighborhood of probably forty or fifty million bushels.

A. And only delivered about nine? A. Yes, sir.

Q. Isn't that one-fifth?

A. I didn't contract it on the Board of Trade.

Q. I didn't ask you that? A. What was it you said?

Q. You stated you had hedged about 50,000,000 on the Board of Trade? A. No, sir, I did not.

193 Q. What did you state?

A. I stated I couldn't tell you how much I did hedge.

Q. You stated it was at least that because you hedged against what you bought?

A. I stated it was probably that because we handled that much.

Q. I will ask you what you probably said then? If you probably hedged 50,000,000 you stated that you only delivered about nine, didn't you? A. Yes, sir.

Q. Isn't that about one-fifth? A. That is one-fifth.

Q. Then a cash house only delivers about one-fifth on its hedging deals, isn't that a fact?

A. For the reason that we sell out a good deal of cash grain.

Q. I didn't ask you the reason. That is true, isn't it, about one-fifth?

A. That is delivered on future sales. I don't say that it is one-fifth.

Q. I don't say you are right about anything. You are probably not, but assuming you are. Now, then assuming as a matter of fact the hedging deals are made by you simply for the purpose of speculating on the question of the chance of a loss on the grain that you have, aren't they? Isn't that the fact?

A. We make our hedges against the grain we have on hand to prevent loss.

Q. You are taking a chance to prevent a loss, so that you will have no chance to lose?

[—] We are not taking a chance. We are avoiding a chance.

Q. Avoid a chance? A. Yes, sir.

Q. That is all the result of your transaction, isn't it?
A. Yes sir.

The Witness: (To Mr. Jenks) What you want me to think over is whether I will tell you—
Mr. Jenks: Q. I want that amount? A. The amount of—

Q. The hedging deals? A. On the grain that we sold?
Q. On the hedges? A. In this period?
Q. Yes.

194 Mr. Robbins: And he wants to know the names of the men.

A recess was then taken until 2 o'clock P. M.

April 25th, 1902. 2:00 o'clock P. M.

Parties met pursuant to recess.

Present: Counsel for respective parties.

G. E. Marcy, having resumed the witness stand was further interrogated by Mr. Jenks, and testified as follows:

Q. Mr. Marcy, have you made an examination, so that you are now able to state the quantities in bushels of grain that you contracted for or contracted to sell on hedging deals on the Chicago Board of Trade for ten months before the first day of March, 1892?

A. I have the amount of sales which we made during the same period as what I testified this morning. We made deliveries—that is, May, 1901, to April 1st, 1902, on wheat and May, 1901, to December 31st, 1901, on corn, and May, 1901, to the last day of February, 1902, on oats, and from May to December 31st, 1901, on rye, I have those amounts, the amount of sales made for the account of the Armour Grain Company.

Q. What was the amount—
A. Pretty close to 19,500,000 bushels.
Q. How much was it on oats? A. On corn, next.
Q. And on corn? A. 26,000,000.
Q. How was it on oats?
A. Just one second and I will give it. Oats, 8,400,000, bushels about.
Q. How on rye? A. 1,800,000.
Q. How much does the whole amount to?
A. Between fifty-five and fifty-six million bushels.
Q. Were those all sales on the Board of Trade on hedging deals? A. Yes, sir.
Q. How much did you purchase on hedging deals of the same commodities for the same time?
A. I haven't got that, but very close to 45,000,000 bushels.

Q. That is, you bought less than you sold?

A. Yes, sir.

195 Q. Mr. Marcy, in those sales of these commodities, how much was sold on account of your company?

A. All of these.

Q. And how much was sold on account of the customers of your Company?

A. I don't know; I haven't got the customers; our customers' trades does not amount to a great deal.

Q. Does your company do a commission business?

A. They do to a very limited extent.

Q. What proportion of all their deals on the Chicago Board of Trade is for your company, and what proportion is for customers of your company, where your company is acting as commission merchant?

A. Well, I should think—I don't know exactly, but I should think 90 or 95 per cent of it is for ourselves.

Q. All of that comes because your house is what is known as a cash house, isn't it? A. Well, it is because we have—

Q. .... and not a commission house?

A. It comes because we are handling the cash grain.

Q. For yourselves? A. Yes sir.

Q. You never make any hedging deals on the Board of Trade unless you have the actual grain on hand, do you?

A. Well, as I said this morning, we make them sometimes in anticipation of getting the grain.

Q. Well, you either have it or expect to have it?

A. Yes, sir.

Q. Now, you take wheat that you buy in the country—as a rule, where do you find the best market to sell it?

A. Oh, that varies. At times the seller-the-month or the option market is the best place to sell it, to put it in on that, and then again Kansas City is the best place to send it. Then again, St. Louis, and then again bring it here and put it through the elevators and ship it to Buffalo, Montreal or New York; it all depends upon conditions, freights and everything like that.

Q. The question is, as a rule. Once in a while, possibly, you will find the market here all right, but as a rule where do you find the best market to sell these commodities?

196 A. Well, the Chicago market is the best market most of the time.

Q. And on the Board of Trade? A. Yes, sir.

Q. And then the most of your stuff is actually sold on the Chicago Board of Trade?

A. No, not most of it, but a good deal of it.

Q. But you said this morning that most of it was sold elsewhere?

A. No, sir. I said that it went elsewhere, but there was a large amount of it sold on the Chicago Board of Trade to go to other cities. For instance, we will sell a lot of grain to be shipped to Buffalo, or we will sell a lot of grain to be shipped to Liverpool, and yet the transaction is made on the Chicago Board of Trade. Chicago don't consume very much stuff themselves.

Q. Do you ship these commodities? A. Yes, sir.

Q. Yourselves? A. Yes, sir.

Q. East? A. Sometimes and sometimes not.

Q. Do you ship them to St. Louis?

A. Yes, sir—we order it shipped from either the West or wherever we happen to buy it.

Q. You ship them?

A. Sometimes, and sometimes we buy it from other people, delivered there, just the way it happens.

Q. Well, your aim is to ship your stuff to the best market for sale, isn't it?

A. Yes sir; wherever we can get the most money out of it.

Q. Yes, and you ship the stuff to those markets without reference to any hedging deals, don't you?

A. We have the stuff hedged here, and when we sell to go to those markets, we buy our hedge in here.

Q. That is not what I asked you?

[—] Or, if we have something—

Q. That is not what I asked you. Your aim is to ship the stuff to the best market for sale, isn't it?

A. We don't ship it unless—it is very seldom that we ship stuff without having a sale first.

Q. Very well, when you do ship it, you ship it to the best market for sale?

A. No, sir; we ship it because we have it sold.

197 Q. Well, then, that is the best market, isn't it? You don't sell it in the poorest market?

A. Well, we sell it where we can get the most money, and then we ship it wherever we sell it.

Q. Yes, that is what I asked. A. Yes, sir.

Q. Now you ship it without reference to any hedging deal, don't you? A. Well, we have bought the stuff—

Q. Answer yes or no?

A. I can't answer that question yes or no.

Q. But you do ship it where you can get the most money for it? A. Ship it where I can—where I have it sold.

Q. Yes, for the most money that you can get? A. Yes, sir.

Mr. Jenks: That is all.

Charles B. Pierce, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified in rebuttal as follows:

Direct Examination

By Mr. Robbins:

Q. What is your business?

A. I am a grain dealer in the firm of, a partner in the firm of Bartlett, Frazier & Company.

Q. How long have you been connected with that firm?

A. Four years.

Q. What has been the nature of their business during that time?

A. Well, we do a large cash grain business principally. We buy the grain in the country, and then besides that we do a large general commission business for others, for other people.

Q. Do you own elevators, operate elevators? A. Yes, sir.

Q. In Chicago and elsewhere? A. Yes, sir.

Q. To what extent?

A. To what extent do we own elevators?

Q. Yes?

A. Well, we have three elevators at South Chicago, with a total capacity of three million and one-half, we have a half million house at Toledo, and we own in connection with Armour—and own an elevator at Buffalo, and we also have—are largely interested in country elevators, out in Nebraska, Iowa, South Dakota and Minnesota.

198 Q. Confining yourself now to what you denominate your cash grain business, I wish you would explain the course of business in that.

Mr. Jenks: I object to that as immaterial to the issues, and incompetent from the present appearance. It doesn't appear that it has anything to do with the Board of Trade.

The Master: You mean the cash grain business conducted on the Board of Trade, Mr. Robbins?

Mr. Robbins: Conducted by this firm on the Board of Trade and anywhere.

The Master: He may answer that question.

A. Well, at the close of the market every day, we send bids to the country for all kinds of cash grain, stating what we will pay. The acceptances to be made before the opening of the market to-morrow morning or the next morning. The opening is at 9:30. And we receive the following morning, either from our agents or direct from the country shippers, acceptances stating the amount that they agree to sell at our bids, and we figure the aggregate of that, and then we go into the various grain pits and sell that grain for future delivery—sell it for future delivery.

Mr. Robbins: (Q.) Grain pits of the Chicago Board of Trade?
A. Yes sir.
Q. Well now, follow the course of business through to the end?
A. When the grain comes in here, whatever of it is what we term "contract"—that is of the grade that is deliverable on these future contracts—we put into our elevators which are termed "regular" which are considered regular elevators; that is, by that I mean elevators the receipts of which are deliverable on contracts on the Board of Trade, and when the time comes around, if we sell it, for instance, for May delivery, when May comes around, we deliver that grain on those contracts.
Q. In that business, do you always sell for future delivery—

Objected to.

199 Q. .... to the extent of your purchases in the country?

Objected to.

A. Almost always.

Mr. Jenks: Objected to as leading.
The Master: I think that is leading.
Mr. Jenks: I move to strike out the answer.
Mr. Robbins: (Q) Well, to what extent do you sell for future delivery?
A. To the full amount of our purchases in the country.
Q. Now, does it ever happen that the grain, when it comes to Chicago, and is put into your elevators, is sold by you in any other way than in delivery—disposed of in any other way than by delivery upon these future contracts? A. Yes sir.
Q. Explain that?
A. Why, there will often be a demand for cash wheat, for instance, for an example, spring up, that when it pays us better to sell that grain at the time that this demand springs up than to carry it and pay the interest and insurance and other expenses that accrue, and deliver it on the contract for which it is hedged, then we sell that grain and buy back our hedge, buy back the future contracts. Very often, and in fact, almost always, the way the business is done nowadays, that grain is sold at a certain price based on May, for instance. Now, of course, if May wheat is worth seventy-five cents, if we carry that wheat to May and deliver it on contract, we get seventy-five cents for it. Well, it may happen at a time when it would cost two cents to carry that to May, we sell it one cent under May and very often we sell it that way. We sell it to shippers, and to Eastern parties; we will sell them a cargo, for instance, a hundred thousand wheat in January, at a cent under May, which is better for us to do than it would be for us to carry it to May and deliver it, because the carrying charges would

exceed a cent by a considerable, and then they give us the May wheat in extension when the cargo is hedged for,
200 but if we sell somebody 100,000 cargo they give us contracts—that is, they give us transfers for 100,000 May wheat, thus ringing it, which cancels the 100,000 we had sold.

Q. Are those contracts they give you made on the Board of Trade? A. Yes sir.

Q. For delivery in the same month? A. The same month.

Q. As your contracts of sale were?

A. Yes; it is possible that part of the contract might be part of the original that we had made; we merely get our contract back—

Q. When did they get their contracts or make their contracts for purchases in May that they delivered to you at the time they bought or received the actual stuff?

A. It is done in this way; the exporters offer grain abroad every night—

Q. Are you an exporter?

A. Yes sir. We are. That is part of our business. We offer grain every night, and when we have acceptances, supposing we have ten loads, that is 80,000 bushels of wheat, accepted, they telegraph to Chicago and if we happen to be the ones, we go right into the grain pit in Chicago and buy 80,000 bushels of May or whatever the future happens to be that the grain is hedged at, and buy it in. If it were a New Yorker, he would have a hedge and then he would have to arrange with us to get the cash wheat and give us this contract in extension for the cash. That contract that he gives us, of course, is an offset to the contract which we have already made against this grain.

Q. What is the total amount of grain which, during the last year, you have delivered out and received pay for upon these contracts for future delivery or by way of hedge, made upon the Chicago Board of Trade by your firm in the manner you have described?

Objected to.

A. You mean in our cash—

Mr. Jenks: Wait a moment.

201 Mr. Robbins: Yes, I mean in your grain business.

Mr. Jenks: I object to that question unless the witness can state from memory, without reference to any book whatever, or any memorandum that he has taken from a book, and I object for the reason that the books are the best evidence. In other words, I object to his testifying to the contents of books, a portion of the contents of the books, unless he has the books here, so that we may get the whole of it that we want. Now, I presume this witness has taken a memorandum from the

books of just what Mr. Robbins wants, which is actual deliveries, but what we want is the total amount contracted for.

Mr. Robbins: Well, we will jump those fences when we get to them. * * * Read the question.

(The question was read by the reporter.)

Mr. Jenks: I will ask him in advance—I think I have a right to.

The Master: Yes.

Mr. Robbins: Well, I object to your breaking in until cross-examination.

The Master: Yes, I understand. I sustain the objection to this gentleman's answering from this memorandum. Now, if he can close it up and give the answer without the memorandum, all right.

(The question was again read by the reporter.)

Mr. Jenks: Now, I will object to that unless the witness can state from his own recollection, without reference to any books, or any memorandum from books, the amount.

The Master: He may testify to his own knowledge.

A. Well, that would be impossible; the amount is too large; too many different kinds of grain.

Mr. Robbins: Have you any memorandum that you have compiled from your books that will show it? A. Yes sir.

Q. Produce it please?

A. It is right here. The gentleman has it. (Referring to Mr. Jenks.)

202 Mr. Harkless: Now, he didn't keep the books.

Mr. Robbins: That don't make any difference. A partner does not have to keep books, to know the amount of business done.

The Master: That question is answered. Ask the next question.

Mr. Robbins: (Q) Did you have to do with making this memorandum you speak of? A. Yes sir.

Q. Did you compile it from your books? A. Yes sir.

Q. Now, look at the memorandum and state. Answer the question.

Mr. Jenks: That I object to.

The Master: Mr. Jenks will have the right to cross-examine him upon this particular memorandum before he can testify to it.

Mr. Robbins: Yes. Answer the question.

Mr. Jenks: I object to that.

The Master: Mr. Jenks, I say, has the right to cross-examine upon this memorandum now.

Mr. Robbins: Yes; all right; I don't care.

By Mr. Jenks:

Q. Mr. Pierce, who kept the books of your firm?

A. Mr. Hatch.

Q. You did not keep them? A. No sir.

Q. Can you state from memory the contents of those books?

A. No sir.

Q. Can you state from memory the amount of hedging contracts that your firm had on the Board of Trade from May to November last year—No, from May to—

A. To the present time.

Q. .... to the present time, May last year, to the present time? A. No sir.

Q. Have you any memorandum to show the quantities contracted to be sold by way of hedge? A. No, sir.

Q. The memorandum that you produce here is only a partial memorandum from your books, is it?

A. It is the total of our deliveries of grain for our cash
203 business outside of our commission business that memorandum you have there (indicating).

Q. Is this memorandum in your handwriting?

A. No sir; it is in Mr. Hatch's handwriting.

Q. The bookkeeper made this? A. Yes, sir.

Q. And the bookkeeper got the figures from the books?

A. Yes, sir.

Mr. Jenks: I object to the witness testifying from this memorandum.

By Mr. Robbins:

Q. Did you co-operate with the bookkeeper in making these figures? A. I merely told him what I wanted.

Q. Do you know in round figures, without reference to that statement, about how much grain you delivered on those future hedges for the last year—

Objected to.

Q. .... as a partner in the firm?

Mr. Jenks: I object to that, for the reason that the witness has already stated it to be impossible.

A. No, he didn't ask me the same question you did.

The Master: The question is, do you know of your own knowledge, outside of this memorandum?

Q. Shall I answer Mr. Robbins' question or this question?

The Master: Answer Mr. Robbins' question.

Mr. Harkless: Outside of any memorandum you have got from your memory.

(The question was read by the reporter.)

Mr. Harkless: That is, do you remember without regard to having ever seen the memorandum, supposing you had never seen this, would you know?

A. That question does not apply to this memorandum.

Mr. Robbins: No.

The Master: You may answer the question with the understanding that your recollection from this memorandum is excluded.

A. It has nothing to do with it at all?

Mr. Robbins: No.

204 A. I know very closely what the amount is, for grain we took in and paid for on future contracts, and delivered on future contracts, the total together. I don't know either one distinct, but I know what the amount the total amount was of grain that we took in in settlement of sales to us for future delivery, together with what we sent out, delivered out, and received our pay for on sales of future delivery. I know about what that amounts to or very closely.

Q. Well, how much?

A. It was about 12,000,000 bushels of all kinds of grain.

Q. That you received and delivered out?

A. Yes sir. That is grain—that is, I want it distinctly understood, that is grain that we took in on purchases for future delivery and for which we paid the cash when it was delivered to our office, and also grain which we delivered out on sales for future delivery and for which we received the cash when it was delivered; about 12,000,000 bushels of all kinds of grain.

Q. That is, for the year that you are speaking of?

A. No, that is less than a year; that is since May 1st, 1901, up to the present time.

Q. Does that include the grain you bought in the country, the grain on future delivery?

A. Well, that includes that portion of the grain we bought in the country that we delivered on future contracts.

Q. That would include—

A. That would include our entire—

Q. All grain bought in the country?

A. It don't include our entire purchases in the country, because all grain bought in the country by us is not sold on

future contracts. It is often disposed of by us before the contract expires or we receive the contract back, a contract for the same amount.

Q. Well, minus the amount of the grain on hand, wouldn't the sales and purchases be equal?

A. I don't understand that question.

205 Objected to as leading and improper. Objection overruled by the Master.

A. I don't think I quite understand the question, Mr. Robbins.

Q. Well, to deliver the grain, you had to have it?

A. Yes sir.

Q. And you say that the 12,000,000 includes grain delivered to you upon your purchases for future delivery? A. Yes sir.

Q. And the grain delivered out by you on your sales for future delivery? A. Yes, sir.

Q. You couldn't deliver it out for future delivery before you had it? A. No, sir.

Q. And received it? A. No, sir.

Q. So that, less the amount now on hand, wouldn't your deliveries upon your sales for future delivery be the same as your purchases?

Objected to as leading; objection overruled.

A. Why, not necessarily, because in the 12,000,000 bushels is included not only our own grain, but grain which was given to us by customers, which we handled for customers in our commission business.

Q. Well, in your own grain business, can you give us some estimate, your best estimate?

A. Yes, I can come very close to it.

Q. Of the extent, the volume, the quantity of grain that you delivered out and received pay for upon those contracts for future delivery, made by way of hedge in your grain business upon the Chicago Board of Trade?

A. Yes—you mean what percentage of our entire cash business that we delivered?

[A.] No, not the percentage, but the amount or volume, the volume of it. A. In bushels?

Q. In bushels, your estimate.

Mr. Harkless: Delivered out to where.

Mr. Robbins: Delivered out on these contracts for future delivery made on the Board of Trade.

A. Well, I think it is very close to about four millions and one-half.

206 Q. That is during this last year?
A. Since May 1st, 1901.
Q. Can you give us your estimate of the amount of money received by you in payment of the grain thus delivered out?
A. Well, that 12,000,000 bushels would—
Q. No, I mean of this—

Mr. Harkless: The four millions.

A. Oh, that—Let's see; that would be about—that figures about 2,750,000.

Mr. Robbins: (Q) Were you connected with a milling firm in this city before you became connected with your present firm? A. Yes.
Q. What was the name of that company?
A. The Star & Crescent Milling Company.
Q. They operate flour mills in the city of Chicago?
A. Yes, sir.
Q. Was the system of hedging resorted to by your—
A. Oh, yes, sir.
Q. .... by that milling concern? A. Yes, sir.
Q Explain in what way? A. Why—

Mr. Jenks: I object as immaterial.
The Master: You mean hedging on the Board of Trade?
Mr. Robbins: Hedging on the Board of Trade.

Objection overruled.

A. When we made sales of flour, if we weren't able to buy the cash wheat of the quality or the variety we wanted at the time, we would buy a contract for future delivery.
Q. On the Chicago Board of Trade? A. Yes, sir.

Mr. Harkless: What for future delivery—wheat or flour?

A. Contract for wheat. All flour is made from wheat, and then we would buy later on, usually from the elevator men, cash grain, and give them in exchange for it this contract which we bought as a hedge against our flour sales, and when we had —when cash wheat as moving freely and we were buying in excess of our sales of flour, we would sell it for future delivery as a protection against a declining market.

207 Mr. Robbins: To what extent was that resorted to by your firm?
A. Well, to whatever was necessary—to a considerable extent. We almost always had grain for future delivery bought or sold for future delivery, one way or the other, according to how we happened to be fixed.
Q. Purely for the purpose of hedging?

A. Purely for the purpose of hedging; yes, sir.

Q. What kinds of grain were included in your statement of the amount delivered and paid for in the year?

A. Wheat, corn—

Mr. Harkless: What do you mean, 4,500,000?

Mr. Robbins: Yes.

A. Wheat, corn, oats and rye.

Cross-Examination

By Mr. Jenks:

Q. Mr. Pierce, covering what period of time were you with the Star & Crescent Milling Company? A. From 1884 to 1898.

Q. Covering what period of time have you been with Bartlett Frazier & Company?

A. From the summer of 1898, up to the present time, nearly four years. It will be four years next August.

Q. Was that milling company merely for manufacturing grains into flour? A. We ground nothing but wheat.

Q. Eh?

A. We ground nothing but wheat; made wheat flour; that was all.

Q. Did that milling company handle any other grain than wheat? A. No sir.

Q. Did they ever actually buy any wheat except to be ground into flour at their mills?

A. Not—we have bought wheat that we did not grind into flour; but it was bought in the first place with the intention of grinding it into flour, the same as—

Q. The object of the business was to grind into flour all the wheat they bought? A. Yes, sir; that is the idea.

Q. Had they any particular market in which they sold the flour after they ground it?

A. No, we sold it in all markets.

208 Q. Did they sell the flour on the Chicago Board of Trade? A. Some of it.

Q. In proportion to the whole amount sold, how much did they sell on the Chicago Board of Trade?

A. I could not answer that exactly; but it would not be a very large per cent. Most of it was shipped.

Q. How much would you think?

A. Oh, I should not think over ten of fifteen per cent.

Q. You have spoken of that company making hedging contracts? A. Yes, sir.

Q. What do you understand is meant by a hedging contract?

A. Why, there are in the—by a miller, do you mean, for instance, in this case, this kind of a case?

Q. Yes, by a hedging contract, what do you understand that means?

A. Well, a hedging contract is a contract that is made for the delivery of any kind of grain in the future, and the reason it is a hedge, is because it is a protection against a possible declining market.

Q. How is it a protection?

A. Well, if, for instance, speaking as a miller, if I bought a round lot of wheat, because it was offered to me, the quality I wanted, at a fair price, and I could not sell, it was more than I could sell in the form of flour at the moment, I would sell it for future delivery.

Q. Would you call that a hedge? A. Yes, sir.

Q. And then you would deliver that wheat on the contract?

A. Not necessarily.

Q. Well, but I am speaking of a hedging contract.

A. This is a hedging contract.

Q. Now, I want to get that separated from every contract on the Board for future delivery?

A. There is no difference between a hedging contract and any other, none whatever, for a minute.

Q. Wait a minute. Do you want to stand by that answer?

A. Do I?

Q. Yes.

A. Yes sir. I am speaking from the standpoint of a miller now.

209 Q. Then there is no such contract as a hedging contract, is there? A. Yes sir; there is.

Q. Now, I ask you what a hedging contract is?

A. Well, I have told you what it is.

Q. But you say it don't differ from any other?

A. No sir, not in the least.

Q. Well how can you tell whether it is a hedging contract or not?

A. Well, because if—I think I see now the point you want to bring out.

Q. I want to know what a hedging contract is?

A. Well, it is a sale for future delivery against grain owned, cash grain owned. That is a hedging contract.

Q. That is a hedging contract? A. Yes, sir.

Q. Now, the object of that sale is to enable you to manufacture and ship to other markets, or to ship to other markets the commodity without reference to delivering it on the hedging contract? A. Not at all; that was not what I said.

Q. Well now, what is a hedging contract?

A. A hedging contract is a sale of grain for future delivery against cash grain owned by the party who makes the future contract.

Q. What does it hedge?
A. It hedges the grain that he has on hand.
Q. What do you mean by the word "hedge"?
A. Well, I have explained that now three times to you.
Q. Well now, just tell me what the word "hedge" means?
A. Well, it means several things. I am not obliged to explain the dictionary.
Q. What do you mean by the word "hedge"?
A. I have told you three times what I mean by the word hedge. You asked me what I meant by a hedging contract, what I considered a hedging contract, and I have told you three times. I can't make it any more distinct.
Q. What do you mean by the word "hedge"?
A. I have told you three times what I meant by the word "hedge" as hedging is used in connection with a hedging contract.
210 Q. All right; we will take the case of the miller. They have a hundred thousand bushels of wheat on hand which they propose to grind into flour, and to sell that flour. They don't know whether the wheat will go down in the market or not, so they go down on the Board and sell 100,000 bushels of wheat for future delivery? A. Yes, sir.
Q. That is, they sell it by making a contract to do so, and to deliver it in future? A. Yes, sir.
Q. Then they manufacture their 100,000 bushels of wheat into flour? A. No, sir.
Q. And ship it— A. They do not.
Q. What? A. No, sir.
Q. They don't? A. No, sir; not necessarily.
Q. What do they do with the wheat?
A. They, unless there is a demand for the flour, if they can sell the flour and buy their future contract back at a satisfactory price, they do so and protect the value.
Q. Suppose they do buy back—
A. Do you want to know—
Q. At a satisfactory price, what do they do?
A. Then they deliver the wheat on the contract.
Q. And let the mills remain idle?
A. Yes, sir; we have had to do that unfortunately a good many times.
Q. Then they don't buy the wheat to make it into flour?
A. They did, if there was a profit in it.
Q. They didn't intend to manufacture it unless there was a profit? A. No sir.
Q. Now, we will go back to the original proposition. We will suppose they did just what I supposed before, and that they did manufacture the 100,000 bushels of wheat into flour, and then they sold the flour in another market. Now they, by

way of hedge, have sold the wheat for future delivery on the Chicago Board of Trade—

A. No, you are testifying now. That is not what I testified to.

211 Q. Well what did you testify to?

A. Well, it is here.

Q. Well, we will start again. Supposing the miller has 100,000 bushels of wheat on hand that he intends to manufacture into flour, and shipped the flour to some other market and sell it. Starting out with the wheat on hand he goes on the Board of Trade and makes a hedge sale of 100,000 bushels of wheat for future delivery. He then goes ahead and manufactures the 100,000 bushels that he has into flour; he ships the flour to another market and sells it. What becomes of his sale of 100,000 bushels of wheat that he had made on the Board of Trade for future delivery?

A. I don't know; I never did anything of the kind myself; so I can't answer that question.

Q. Now, I will suppose again that he has 100,000 bushels of wheat which he intends to manufacture into flour; he goes on the board of Trade and makes a hedge sale for future delivery of 100,000 bushels of wheat. Does he do that for the purpose of guarding against the wheat going down in price?

A. Yes sir.

Q. —in the market? A. Yes, sir.

Q. Suppose it does go down in price and he has manufactured his 100,000 bushels of wheat into flour, and shipped it to New York; then he will go on the Board of Trade and buy in 100,000 bushels, because it is down in price, won't he?

A. Why, I don't know what he would do. I could only answer for myself. You are only premising this question on a miller having ground wheat which he had already sold for future delivery; that was not something we were in the habit of doing.

Q. Did the Star & Crescent Mills grind any wheat which they didn't have? A. No, sir.

Q. My question was premised upon the fact that they had the wheat on hand? A. Yes, sir.

212 Q. Now, if they grind it into flour, and ship that flour somewhere else, they do not ship it back to deliver it on a hedging contract for a sale of 100,000 bushels, do they?

A. Well, I don't know about that; I don't know. You are going on the basis that they grind the wheat and still leave their contract out, aren't you?

Q. Well, don't they? A. No sir.

Q. You mean to swear that the miller, having 100,000 bushels of wheat on hand— A. Yes, sir.

Q. —which he proposes to grind into flour, and he hedges on the Board of Trade by selling 100,000 bushels of wheat, you

mean to say that he does not grind that 100,000 bushels of wheat which he has into flour, but keeps that to deliver on his hedging sales?

A. If you mean by "he" the Star & Crescent Mills under my management, we always had more wheat on hand than we ever had sold for future delivery; more cash wheat always than we ever had sold for future delivery.

Q. Did the Star & Crescent Milling Company ever sell any wheat on the Board of Trade excepting as a hedge?

A. No, sir; we never did.

Q. Did it ever buy any on the Board of Trade for future delivery, excepting to fill a hedging sale?

A. No, sir; except as a hedge against flour, we would buy, for instance, as I explained in the first place, when our sales of flour exceed the amount of grain on hand, cash grain, then we had to go into the market at times and buy grain for future delivery as a hedge against those sales, not being able at the time, to place our hands on the amount or quality of grain we wanted.

Q. And then, after buying for future delivery on the Board of Trade, would the same company buy cash wheat anywhere else, if it could? A. Oh, yes.

213 Q. And manufacture that wheat into flour?

A. Yes, sir. When we bought the wheat somewhere else, we would sell the contracts on the Board of Trade.

Q. You would what?

A. We would sell the contracts we had on the Board of Trade?

Q. How? A. How?

Q. Yes?

A. Well, we would sell it the same way we had bought it. We would make a contract for future delivery.

Q. Yes. Were you then a member of the Board of Trade?

A. Yes, sir.

Q. Did you go on the Board to make a sale, or did you do it through a broker?

A. Well, I always I did it—almost always—well, sometimes I did, and sometimes it was done through a commission house.

Q. Well, when you did it through a commission house, would you make a settlement right there and then with your commission man?

A. Not necessarily, no; usually, though, I think.

Q. Don't you know?

A. Well, I can't state positively; I think usually we did.

Q. And didn't you settle on the difference between the purchase and sale price?

A. Well, we didn't settle with the commission man; the Commission man handled the business for us. What his method was I can't say that I can state very positively.

Q. Well, you both bought and sold through the same commission man, didn't you?

A. Well, who is "both"? Whom do you mean?

Q. What? A. Whom do you mean by "both"?

Q. I mean that the milling company both bought and sold through the same commission man?

A. Yes sir; he settled the contracts for us in the same way, of course.

Q. You don't know how? A. No, I don't know how.

Q. Were you ever an active man on the Board of Trade?

A. Well, what do you mean by that?

214 Q. Did you do business there yourself? A. Yes, sir.

Q. Did you ever do business there as a commission man or broker?

A. Well, of course the house that I am connected with now do business as a commission man in that way.

Q. And do you make purchases and sales on the floor yourself? A. Yes, sir.

Q. Do you know how they do business on the Board of Trade? A. I think so.

Q. How long have you know that?

A. Well, I guess so long as I have been there.

Q. That is how long?

A. Well, that is since—that is eleven years.

Q. Eleven years. Within eleven years you were with the Star & Crescent Milling Company?

A. Part of that time I was; seven years I was with them.

Q. During the eleven? A. During the eleven; yes, sir.

Q. Now, during that whole time, you knew how they did business on the Board of Trade?

A. I knew about the way; yes, sir.

Q. Now, do you mean to say that you don't know how the commission man, how the broker for the Star & Crescent Milling Company closed up deals on the Board of Trade?

A. I couldn't say in any special deal, because there are different ways.

Q. Yes, but as a rule don't you know how he did it?

A. No, I couldn't tell; not in any special trade; no, sir.

Q. Well, generally, you don't know?

A. Why, certainly I do, generally.

Q. You do. Then I ask you if, so far as the broker was concerned, the Crescent Milling Company merely got or paid the difference between the purchase and sale price in closing up their deals there— A. Well, the commission man—

Q. —hedging deals?

A. The commission man would render us an account sales, so much May wheat bought and so much May wheat
215 sold, and of course, we would either pay him for the loss, or he would pay us for the gain; that is, the difference in the price—

Q. Then you did settle on the gain and loss prices?

A. No, we didn't. What do you mean by sold on the gain and loss prices?

Q. Settle, I said settle. You did settle on the gain or loss differences?

A. With him; yes sir; with the commission man, yes, that is right.

Q. Yes. Now, at the present time, does your firm deal on the Board of Trade principally on its own account, or does it deal there principally for customers and on commission?

A. Principally for customers.

Q. And how long have they been dealing principally for customers?

A. Well, I can't answer that positively; it is not so—

Q. Well, ever since you have been there?

A. Yes, ever since I have been there.

Q. Since 1898? A. Yes, sir; that is right.

Q. Are your customers scattered over the country?

A. Yes, sir.

Q. Do you do business with them by telegraph?

A. Yes, sir.

Q. Where you make a purchase for a customer on the Board of Trade and he orders that purchase closed out, do you settle with the customer on the difference between the purchase and sale price? A. Yes, sir.

Q. Now, can you tell how much business your firm has done for customers since you have been there by way of contracts of purchase of different commodities? A. No, I cannot.

Q. Can you tell the amount of deliveries made in proportion to the amount of transactions on the Board of Trade?

A. No, I can't do that.

Q. Can you make a pretty good guess as to what proportion of the trades you make for customers result in actual deliveries, and what proportion of the trades are rung up, settled through the clearing house? A. No, I could not.

216 Q. Well, you can give us a pretty good guess, can't you?

A. No, I could not; I have never looked it up. I haven't any very accurate idea.

Q. All trades that are rung up are settled through the clearing house, are they not?

A. Well, I think so; I am not positive about it, but I think

Q. Does your firm keep a settling clerk? A. Yes, sir.
Q. More than one?
A. Well, I can't answer that; I don't know; one, I think.
Q. Is it the business of that clerk to see what deals you have on the Board that may be rung up?
A. Well, I think so; yes, sir.
Q. And is it a part of the business of the firm to see that all trades that can be rung up are settled in that way?
A. I think usually, yes, sir; to simplify matters.
Q. Your firm has the control and management of elevators?
A. Yes sir.
Q. Do they have any grain in those elevators except their own?
A. Not very often; not very often; because we do a merchandising business.
Q. Any grain?
A. Well, some of our houses are regular houses. At the same time, the public very seldom puts the grain in there.
Q. As a rule the grain in the elevators belongs to your firm?
A. In our elevators; yes, sir.
Q. Is it a part of the object of your firm to keep those elevators well filled with grain?
A. Why, yes, sir; they would't earn storage otherwise.
Q. No; and the object is to make money?
A. That's what they are for.
Q. By getting storage on the grain? A. Yes, sir.
Q. Getting storage charges? A. Yes,sir.
Q. That adds to the price of the grain? A. Yes, sir.
Q. Can you tell us the amount of contracts for purchase and sale on the Board of Trade covering the period from May last year to the present time?
217 A. Will you please read the question.
(The question was read by the reporter).
Q. I mean the amount in bushels of grain.
Mr. Robbins: You mean by "your business" his business, or the business of the Board of Trade.
A. Business of the Board you mean?
Mr. Jenks: No, of your firm. A. No.
Q. Havn't you any idea? A. I have not.
Q. You would think what amount of wheat resulted in actual delivery? A. What percentage?
Q. What per cent? A. I haven't any idea.
Q. You would think the quantity in bushels amounted to how much?
A. Well, about—well, that question is answered as of long ago, and I said that the amount of grain taken in by us and paid for—
Q. I know what you said.

Mr. Robbins: Let him answer the question.

A. You asked me one side of the question.

Mr. Jenks: I know what you said.

Mr. Robbins: I insist upon the witness being accorded the privilege of answering.

Mr. Jenks: Mr. Reporter, will you read the question to Mr. Robbins?

(The question was read by the reporter).

Mr. Robbins: Now, I ask that the witness be allowed to answer.

Mr. Jenks: I will allow him to answer, but I don't want any story.

Mr. Robbins: Now, finish your answer, Mr. Witness.

Mr. Jenks: He says he don't know.

Mr. Robbins: The witness started to answer; let him finish it.

(The answer of the witness was read by the reporter).

A. Shall I go on and finish the answer?

218 Mr. Robbins: Yes.

A. And the amount delivered out, and for which we received pay, amounted to about 12,000,000 bushels.

Mr. Jenks: Now, I move to strike out the answer as not responsive to the question.

Q. I will ask you again, Mr. Pierce, how much grain during that period you actually received and paid for, gave your check for the grain at the time you received it, that was delivered on the contracts that you made on the Chicago Board of Trade for future delivery?

A. I can't answer that accurately enough.

Q. Whatever you did receive, do you mean to say that you delivered it out also on contracts made on the Board of Trade?

A. Well, not necessarily—No, sir, not always.

Q. You did deliver grain at many different places, did you not?

A. Well, what do you mean by many different places?

Q. Shipped it to other places, sold it in other places.

A. Not on this—If you are just talking now about deliveries of contract grain on contracts for future delivery, of course, that is all made either on the Board of Trade itself during the proper delivery hours, or at the offices of the different firms to whom the grain was sold or delivered, at our office, if they had it sold to us.

Q. Did you between May last year, and the present time, deliver grain at any other places than Chicago?

A. Not on contracts of future delivery.

Q. Did you at all, I asked you, on contracts?

A. I don't understand what you mean there. Do you mean the delivery, or we sold cargoes of grain and delivered it at different places.

Q. Either cargoes or anything else?

A. Oh, yes; we sold grain and delivered it everywhere pretty nearly.

Q. Where?

A. At Buffalo, and at New York and Newport News, and Baltimore, Liverpool, London.

Q. How much did you sell and deliver at other places than Chicago? A. Oh, I couldn't tell you that.

Q. About how much?

A. Well, I can't tell you on last year. We have sold
219 and delivered grain as high as 35,000,000 bushels in a year.

Q. Was any of that grain delivered on contracts for future delivery made on the Chicago Board of Trade?

A. Why, it certainly was not delivered outside of the city—

Q. Well—

A. Because contracts on the Board of Trade are only deliverable—

Q. Well, to say "no" would be a proper answer to that question, wouldn't it? A. No, it would not.

Q. Well, did you deliver anything in London?

A. Not on a contract with the Board of Trade, because a Board of trade contract is not deliverable in London.

Q. That is what I am asking, whether all the grain that you delivered outside of Chicago was delivered on something else other than contracts for future delivery on the Board of Trade?

A. Always, always delivered on something else.

Q. Did you ever buy any grain for future delivery on the Board of Trade, which grain you shipped to some other place?

A. Why yes, after we got it here we would send it somewhere else, if that is what you mean.

Q. Did you ever get any— A. Yes, sir.

Q. —Here on contracts for future delivery made on the Chicago Board of Trade? A. Yes, sir.

Q. How much did that amount to within the past year?

A. Oh, I couldn't tell you.

Q. About how much? A. I couldn't tell you that.

Q. How much did it amount to since the first of May last year? A. I couldn't tell you that accurately?

[A.] About how much?

A. Well, it would be only a wild guess and there is no use of—

Q. Well, give us a wild guess.

A. Oh, I prefer not to do that.

Q. Now, if you don't know how much you received on those contracts, how much did you deliver out on those contracts during the same period of time?

A. I only know what the total of the receipts and the deliveries was. I don't know—I haven't it clear in my
220 mind just how much was taken in and paid for, and how much was sent out and for which payment was received.

Q. Then, you think to couple the two together—Did you have to couple the two together in order to get the amount you have stated?

A. Yes, I had to, because I have forgotten just what proportion of the two—I have forgotten what proportion of the 12,000,000 bushels was taken in and what was delivered out. I only know that the two together amounted to that.

Q. Can you tell what amount of grain your firm handled last year? A. No, I don't know exactly.

Q. In the different elevators? A. I don't know exactly.

Q. Did they handle any grain that did not go through their elevators? A. Yes, oh, yes, they did.

Q. A large amount? A. Yes.

Q. What proportion went through their elevators?

A. Oh, I should say about—I think I can answer that accurately enough. I think about probably three fifths.

Q. Three fifths of it went through the elevators?

A. Yes, sir.

Q. The two fifths of the grain they handled where was that grain purchased, and where was it delivered?

A. It was purchased in the country and delivered on contract here in Chicago.

Q. Delivered to whom?

A. To the parties to whom we sold it.

Q. That did not go through your elevators?

A. No, not through our elevators.

Q. Now what proportion of the business that your firm has done in the past year in the Chicago Board of Trade was done on their account, and what proportion was done for the account of their customers?

A. I can't answer that. It must have been greater for the customers, though.

Q. How much grain did they deliver to those customers during the past year?

A. How much did we deliver to customers?

Q. To those customers where you were buying and selling on commission for customers?

A. I can't answer that exactly.

221 Q. What proportion of the amount purchased for customers was delivered to those customers?

A. I can't tell you that exactly. I remember one lot of about 700,000 bushels of oats we took in for one customer, and delivered to him.

Q. Who was that?

A. That was S. E. Bartlett & Company of Peoria. It was over that. It was nearly 800,000.

Q. Do you remember any other customers who received anything?

A. Well, I do not; there were others; but I happen to remember this, because it was an unusually large amount, and it was impressed on my memory.

Q. How many customers did your firm have?

A. I can't answer that.

Q. About how many? A. I don't know that either.

Q. Did they have a thousand?

A. Oh, I should not think so; no, sir; not anywhere near that.

Q. Five hundred?

A. Well, I should say that perhaps that might be perhaps somewhere near the number.

Q. Out of that four hundred, how many of them ever received anything? A. I can't answer that.

Q. Have you any idea; can you give us a guess at it?

A. No, I can't. I would if I could but I really can't give you any idea.

Q. Out of the four hundred, were there over twelve that you ever delivered anything to?

A. Oh, there must have been more than that.

Q. You think more than that?

A. I know of my own knowledge that there were more than that; I don't know exactly.

Q. Would you say there were twenty?

A. Oh, I know of at least twenty, because that was my own special business.

Q. Then out of that whole lot of four hundred there were 380 that received nothing? A. Oh, not so.

Q. Not so?

A. Not so. I said at least twenty. I don't know how many.

Q. Were there three hundred who received nothing?

A. I couldn't answer that.

Q. You don't know? A. No, sir.

222 Q. What was it in your business from May last year to the present time that amounted to 1,647,000 bushels?

A. That was wheat that our cash grain account delivered on the Board of Trade.

Q. Did your have an account not cash grain account?

A. No—What do you mean? One of our own accounts, one of our own special accounts?

Q. What difference do you make between cash grain accounts, and any other accounts?

A. Well we have, of course, we have to have a cash grain account in the conduct of our business, to which all the cash grain bought is charged, and to which all the grain sold is credited. It is what we call our cash grain account.

Q. Well, what other account can there be?

A. The accounts of our customers.

Q. Accounts of customers. Now what do you call those accounts?

A. Well, they are accounts of customers, individual accounts.

Q. Now, the deliveries to the customers you can't testify anything about? A. No, not accurately, no.

Q. You don't know anything about that? A. No.

Q. Can you approximate it as to quantities in bushels?

A. I cannot, because—

Q. Well, it don't make any difference why?

[Q.] Well, if I only knew what proportion of that 12,000,000 bushels we took in and what proportion of it we sent out, I could answer that question, because we took in—

Q. Well, let's go at it again. What was it you said about 12,000,000 bushels?

A. I said that the amount of grain that we took in and paid for on contracts that we had made for the purchase of grain for future delivery and the amount of grain that we sent out and delivered out and for which we received the money, which we delivered out on sales for future delivery, amounted together to about 12,000,000 bushels, but I don't remember just how much of it came in and how much of it went out. I can't remember that.

Q. Well, then, if they were just equal, the amount that came in and that went out—

A. There would be about six million of each.

223 Q. If they were just equal there would be only six millions? A. That is it.

Q. Now, how much grain in bushels did you during the same time contract to sell for future delivery?

A. The total of future contracts—Oh, I don't know that.

Q. Well, would it be a great many million bushels?

A. Oh, yes.

Q. How many would you say?

A. Oh, I don't know; I could not answer that.

Q. Would it go up to the billions?

A. That I don't know; it would be a large amount.
Q. Well, wouldn't it go up to the billions of bushels?
A. Oh, I don't know really.
Q. What is your best judgment about it?
A. I don't know; it would be a very large amount, but I don't know how much.
Q. Do you remember how much it was for any one day?
A. No, sir, I don't.
Q. Any one day during the past year?
A. No, sir; I don't.
Q. Or any week? A. No, sir.
Q. Or any month? A. Not for any period.
Q. Did you actually receive one per cent of the grain that you contracted to buy for future delivery on the Board of Trade during the past year?
A. Oh, I should think a good deal more than that; I am not sure, though; but I should say a good deal more.
Q. Would you say it equalled ten per cent?
A. I should say more than that; yes.
Q. But you don't know anything about it?
A. No, I don't know.
Q. Will your books show? A. I think so.
Q. You were not asked by Mr. Robbins to look at the books with that idea? A. No, sir.
Q. How long would it take you to look at the books and testify here as to the amount of contracts that you had?
A. Why, I don't know. It would take considerable time.
Q. Is your house called a cash grain house?
224 A. Not necessarily, no; not as some others are, who are exclusively a cash grain house.
Q. Your business is principally a commission business for customers?
A. No, that is not the principal part of our business—Well, it is in one way, yes; we handle more grain for customers—
Q. Your dealings in futures on the Board of Trade are principally for customers?
A. No, we handle more customers—Yes, for future deliveries.
Q. Yes. Do these amounts, these 6,000,000 bushels or 12,000,000 bushels— A. Approximately.
Q. If you call it that way, include all of the grain that you received and delivered for customers, as well as yourselves?
A. And delivered on contracts for future delivery on the Board of Trade?
Q. Yes? A. Yes, sir.
Q. Well, I would like to know about how much in quantity of bushels your contracts for future delivery amounted to on

the Board of Trade from the first of May last year down to the present time? A. I can't answer that.

Q. Well, you can see that just as readily as to make a memorandum of what was delivered, can't you?

A. You mean I can, or I could—which do you mean?

Q. You can from the books?

A. Oh, I could from the books, yes, I think so; I think so. I am not absolutely sure, because I have looked up the one, but have not looked up the other, but I think so.

Q. How many books would you have to look at?

A. That I don't know; a good many, though, I guess.

Q. Now, if you will have your bookkeeper look at that and come in and tell us the amount that the contracts call for for future delivery from May 1st down to the present time, I would like to have that done?

Mr. Robbins: We object to that; you would not allow this witness to testify as to the books on direct examination. How he wants him to prepare a statement on the cross. * * *

Mr. Jenks: I would like a subpoena duces tecum
225 then—No, it is not necessary to do that. I will ask the Master to order this witness to produce the books here.

The Master: I think you had better designate them.

Mr. Jenks: The books of the firm of Bartlett-Frazier & Company that will show the amount of the quantities of grain bought and sold on the Chicago Board of Trade for future delivery from May 1st, 1901, to date.

Mr. Harkless: Either for their own account, or for the account of customers, or both, rather.

Mr. Jenks: Or in lieu of that, that the witness examine the books, and be prepared to testify; that's all I want. I don't want to bother them to bring the books, if he will look at them.

Mr. Robbins: I shall object to him testifying from the books.

The Master: I don't think that the knowledge of this witness, from what this witness has stated, is such that he can testify from the books, because he didn't prepare them.

Mr. Jenks: Mr. Witness, will you post yourself, and come in here, so as to be able to testify to an approximately correct amount of those commodities that you contracted to buy and sell for future delivery on the Board of Trade from May 1st down to the present time?

Mr. Robbins: I object to that. That requires the witness to testify from the books, and he was not allowed to testify from the books on direct examination.

The Master: Well, the witness can say whether he will do it or not. * * *

Mr. Robbins: Why should he be put to the trouble of posting himself, if the evidence is not competent. I make the point that the evidence is not competent. * * *

The Master: I think if the witness is willing to post himself, he may come in and answer.

226 Mr. Jenks: Will you do that?

A. I can't answer that question now.

Q. Then give us the name of the bookkeepers who keep the books at present?

A. I don't know what the name of the bookkeeper is.

Q. Give us the names of the bookkeepers that work for your firm? A. I can't do that.

Q. What do you claim to be?

A. I don't know any of the bookkeepers by name. It may seem strange that I don't know any of our bookkeepers by name— Yes, I do know one, but he is not a bookkeeper exactly. He is just one of the clerks. I don't know any of them by name; I know them by sight, but I don't know the name of one.

Q. Who employs the bookkeepers?

A. Why, Mr. Baker has charge of the office.

Q. Mr. Baker? A. Yes, sir.

Q. What is his first name?

A. His name is S. E. Baker.

Mr. Jenks: Well, we will get him. Put that name down. I think we can find out who the bookkeepers are. Now, if you will look at those, Mr. Pierce, it will save all this. Otherwise, we shall have to get somebody who knows about the books.

Mr. Robbins: I shall object to the witness testifying.

The Master: * * * He need not come here and say what the books show, because the books are the best evidence.

Charles A. Weare, produced as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Robbins:

Q. What is your name? A. Charles A. Weare.

Q. What is your firm? A. Weare Commission Company.

Q. What is the business of the Weare Commission Company?

A. Handling grain.

Q. Is it a part of your business to purchase grain?

A. Yes, sir.

227 Q. In the country? A. Yes, sir.

Q. Or do what is commonly called a cash grain business? A. Yes sir.

Q. Do you control and operate elevators? A. Yes, sir.

Q. Where? A. Chicago.
Q. Anywhere else? A. No, sir.
Q. I wish you would explain the course of business in this cash grain business?

Mr. Jenks: I object to that except as connected with the Chicago Board of Trade.
The Master: You say "this cash grain business." You mean deals in Chicago in cash grain?
Mr. Robbins: No, I mean his whole business. I must show the business by the way of introduction, the business of this company—
The objection was overruled.

A. Well, we buy grain for several purposes.
Q. No, but the modus operandi, how do you acquire the grain how do you buy it; where do you buy it.

Objected to; objection overruled.

Q. What is the answer?
A. Buy it along the lines of the railroads, west, northwest, and every other direction where we can find it.
Q. For cash? A. Yes, sir.
Q. Then what is done with the grain?
A. It is brought here.
Q. After you purchase the grain, what do you do upon the Chicago Board of Trade, if anything?
A. We hedge against it.
Q. How soon after it is purchased? A. Immediately.
Q. Well explain how you hedge against it?
A. Well, one of the customs at present is that we will wire to Central points west of here and northwest, and offer so much per bushel for grain delivered either on their track or on track Chicago, or at the Mississippi River, and to be replied to before half past nine o'clock the following morning or business day, and if we have responses from those bids which reach the sellers of grain west of here in time, they wire in and say, "I will sell you one car or ten cars or five thousand bushels or fifty thousand, or whatever it may be, if we get that grain and it is our pleasure, we sell against it, hedge against it, on the Chicago Board of Trade.

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Q. Well now, how do you do it? What class of contracts do you make? And where do you make them?
A. We make contracts under the rules of the Chicago Board of Trade with another member.
Q. On the Chicago Board of Trade? A. Yes sir.
Q. For future delivery? A. For future delivery.
Q. In the grain pit?
A. Whatever grain pit the grain applies to.

Q. Now when the transaction is through, after you have made the contract of hedge, the grain comes into Chicago?
A. The grain comes into Chicago.
Q. And what is done with it?
A. And it is put into the elevators in the proper grade, which constitutes a regular delivery on the Chicago Board of Trade, and when the time elapses for the fulfillment of the contract if we cannot get a carrying charge out of it by putting it forward to another month, we deliver it and they pay for it.
Q. Does it ever happen that that grain is sold before the time of the delivery of the contract that you have made, the future contract that you have made by way of hedge?
A. Yes, sir; very often.
Q. In that case what happens?
A. We buy in the future contract immediately, and base it on the future contract—base the cash transaction on the trades which is done simultaneously.
Q. What reference then, has the future contract of purchase to the previous future contract of sale?
A. It is the basis of it—state that again.

(The question was read by the reporter.)

Q. What relation to each other do they have then?
229 A. Well, the sale of the cash grain that we have in the elevator ostensibly to deliver upon the original contract, upon the contract originally made is based upon that contract.
Q. Yes, I understand, but after you have sold the contract— A. After we have sold the cash grain?
Q. Yes, for immediate delivery? A. Yes.
Q. You have a contract to purchase?
A. We have a future contract open, you know, and we immediately take that in.
Q. You take that in by making a contract— A. Yes, sir.

Objected to.

Q. Explain how you do that?
A. We take it in by buying it or selling it within such time on the Chicago Board of Trade.
Q. For some month?
A. Yes, sir; for the same month that it was originally made for.
Q. And those contracts, what becomes of them?
A. Those contracts we settle up under the rules of the Chicago Board of Trade; just a matter of bookkeeping that is.
Q. About how much grain had your firm delivered and received upon those contracts of sale for future delivery by way

of hedge that you have just testified about, testified to making in your cash grain business?

A. I made a rough estimate on the wheat.

Q. Wheat?

A. We deal largely in wheat and from May, 1891, to—

Q. 1901, I suppose you mean?

A. Yes, 1901, to December, 1901, it amounted to over six million.

Mr. Harkless: Wait a moment. Are you testifying what the books show? A. Yes.

Mr. Harkless: We object to that as wholly incompetent and immaterial. The books are the best evidence.

Mr. Robbins: I am asking for your estimate.

A. I am giving it.

Mr. Harkless: Well, I object to that. His estimate is founded on his books.

A. It is founded on the actual deliveries.

230 Mr. Harkless: Well, but your knowledge is acquired from the books. Did you look at the books before you came over, to find out? A. Yes, sir.

Q. And you are basing your answer on that? A. Yes.

Mr. Harkless: I object to that. It is incompetent; the books are the best evidence.

A. That is the only thing we have to look at. You ask me to say how much we have delivered, and I went and looked to see what it was.

Mr. Jenks: Who kept the books?

A. There is a set of bookkeepers. I don't know the names; that is, to recall the names, but I can recall—

Mr. Robbins: You have a certain knowledge as to the volume of your business as a partner in your concern? A. Yes.

Mr. Harkless: Wait a moment. He has already stated where he got it from; that is objected to.

Mr. Robbins: Now, independent of the books and of your knowledge of the business as a partner— A. Yes.

Q. Give us your estimate of the amount—

A. I can do that.

Mr. Harkless: Just wait a moment, Mr. Weare.

Mr. Robbins: Wait a moment; let me finish the question.

Mr. Harkless: I am objecting to his answering.

(The question so far as propounded was here read by the reporter.)

Q. (Continuing) —of grain during the last year delivered out upon those contracts for future sale by way of hedge that you have testified to, and paid for—

Objected to.

Q. —by the persons to whom they were delivered?

Mr. Harkless: That is objected to, because the witness has already stated that he has no knowledge, outside of what he gained from the books.

Mr. Robbins: No, he hasn't. Answer the question.

231 A. You asked the question of me, whether I had any knowledge on this specific subject—, on that specific question. Now I answered that question, and I also said that I could state from my own knowledge, which I can do.

Mr. Harkless: What of your own knowledge?

A. As to how much grain we delivered during a certain time?

Q. Where did you get that knowledge?

A. I get it by knowing what we had in the elevators, having looked at it with my own eyes, and having examined every car of it.

Mr. Harkless: I object to that, but have no objection to his stating what he had in the elevators.

Mr. Robbins: Well, get the master here.

(The evidence of the witness was here read to the Master.)

A. I will modify that "every car"; that is a little bit broad.

Mr. Harkless: The witness is undertaking to get in here what his books show.

The Master: He has said that that is not the case.

Mr. Jenks: He started out by saying it.

The Witness: What are you trying to get at? Do you want to know how much grain we delivered; is that what you want to know?

Mr. Robbins: (Q.) Mr. Weare, have you made or caused to be made from your books a statement of the quantity of wheat delivered by your firm and payment received for same, on contracts for future delivery, or sold for future delivery by way of hedge on the Chicago Board of Trade in your cash grain business between May 1st and December 31st, 1901?

Mr. Jenks: Answer that yes or no.

A. Read it again.

(The question was read by the reporter.)

Mr. Harkless: Now, that is the selling side only, and not for both sides, but for the selling side.

Mr. Robbins: For deliveries.

The Master: The question is, have you caused that estimate to be made?

232 Mr. Jenks: Yes or no.

A. Yes.

Mr. Robbins: Now, what is the volume?

Mr. Jenks: I object. You mean what is the volume as shown by that estimate, I suppose?

Mr. Robbins: Yes.

Mr. Jenks: And to which I object.

The Master: Then we are no nearer than we were before?

The Witness: Why don't you make it short by just allowing me to make the estimate of the proportion of cash grain? This is not for evidence.

Mr. Robbins: No, I want your statement of quantity, I don't want a statement or an estimate of proportions.

The Master: If this gentleman only knows from the books, and you gentlemen do not agree that it shall go in, I don't see how it is competent.

Mr. Robbins: (Q.) Mr. Weare, can you answer the question I have just put to you, based upon your knowledge of your business, and independent of the books?

Mr. Harkless: Independent of having ever seen the books.

A. Well, that's a pretty funny question.

Mr. Harkless: Well, that's the question. * * *

A. Well, now don't take this down that I am going to say to you. I want to ask a question, but I don't want it to go down here. When a man knows a thing, actually knows a thing, without necessarily going to the books, why can't he answer that?

Mr. Robbins: That is what I am asking you to do.

Q. As a member your firm, and from the knowledge that you have as a member of your firm, can you answer the question that I have just put to you?

Mr. Harkless: Independently of having ever seen the books.

Mr. Robbins: The man is a partner in the business and has to see the books.

233 Mr. Harkless: Then he is testifying to the books.

The Master: Independent of the books, have you any recollection of the figures?

A. Yes, that I can—

The Master: As if you never saw the books.

Mr. Robbins: Then give it to us.
A. Oh, I should say—
Mr. Harkless: Don't try to remember the figures in the books.
A. Eh?
Mr. Harkless: You are testifying to your books?
A. I am not making exact figures; I am not giving it exactly. I should say five millions of wheat.

Mr. Robbins: That is wheat delivered—
Mr. Jenks: Wait a moment; wait until he gets through.

A. That is all I have to say, five millions of wheat.

Mr. Robbins: That is wheat delivered upon contracts made upon the Chicago Board of Trade for future delivery by way of hedge in the manner you have described? A. Yes, sir.

Mr. Jenks: I object to that question as leading.
The Master: Well, I think it has been asked so many times and he has not got to the figures, I think I will let it stand.

Mr. Robbins: You have said that all the contracts of sale by way of hedge in your cash grain business do not result in actual delivery and payment, but sometimes you take in the hedge after selling elsewhere? A. Yes, sir.

Mr. Jenks: He didn't say so.
Mr. Robbins: He did say so.

Q. Are you able to make any estimate of the volume of that business for the same period?
A. That is for grain sold for consumption or otherwise upon which we took the hedge in, based upon that transaction.
Q. Yes.

Mr. Jenks: No, that's not the question.
234 Mr. Robbins: Yes, it is—grain sold for consumption.

[Q.] Yes, that is what it sold for.
Q. Then taking in the hedge that you have made at the time you bought it?
A. Yes, I can give you an estimate on that.
Q. Well, about how much?
A. Twenty-five hundred thousand bushels. Wheat this is that I am talking about. This is wheat.
Q. Wheat, yes?
A. We handle principally wheat, Mr. Jenks.

Cross-Examination

By Mr. Jenks:

Q. Mr. Weare, from May, 1901, to December, 1901, what proportion of your contracts on the Chicago Board of Trade for future delivery of wheat resulted in the actual delivery of the wheat, and what proportion resulted into settlements and ringing up of the deals under the rules of the Board?

A. Somewhere in the neighborhood of one per cent, I should think.

Q. One per cent resulted in what? A. What I said.

Q. Well, you have got it both ways here?

(The question was read by the reporter.)

A. This is an estimate, Mr. Jenks. You want to put that word in there. You know it is only an estimate.

Q. That is all right; but you have only stated one side. One per cent resulted in what, delivery or ringing up?

A. Why, one per cent in delivery.

Q. And 99 per cent resulted in ringing up? A. Yes, sir.

Q. Now, was that your own business purely, or does it include also the business that you did for customers?

A. It is the Weare Commission Company's business.

Q. Individually, personal?

A. No, sir; the firm's business.

Q. Don't you do a commission business for customers?

A. Yes, that is our business, commission business—Oh, yes, that includes everything. I see what you mean now.

Q. It includes everything?

A. Yes, all kinds of trades, everything on the books.

235 Q. How were the ninety-nine per cent of transactions closed up?

A. They were closed up under the rules of the Chicago Board by settlement between members.

Q. Rings? A. Yes, between—

Q. Rings or offsets and through the clearing house?

A. And through the clearing house—settlements is the proper word; settlements with the members.

Q. And it was done through the clearing house?

A. Yes, sir; with the members of the clearing house.

Q. Mr. Weare, you are a member of the Chicago Board of Trade? A. Yes.

Q. How long have you been a member?

A. Oh, 20, 25 years; I guess 20 to 25 years; I don't know exactly.

Q. And your business lately I suppose has been larger than it used to be?

A. In some departments of our business it is larger, yes.

Q. The Weare Commission Company—how long has that existed? A. Since 1885.

Q. I though it was more recent than that. Since 1885. Now, from 1885, down to the present time, have the proportions of your deals in futures resulting in deliveries been about the same that they were from May to December, last year?

A. No, sir; it varies largely with the crops that we have. In the last year we had a very poor crop of corn, and of course the deliveries of cash corn on contracts are necessarily very small.

Q. Is it true, Mr. Weare—

A. The same way in oats; that applies to oats.

Q. —that the grain that you buy in the country is seldom of deliverable grade under the rules of the Chicago Board of Trade?

A. Yes, I think that will apply. I think, as a rule the country grain needs cleaning and properly fixing so as to comply with the rules of the Chicago Board of Trade, for contract grade; that is, in wheat I am talking about.

Q. Well, I will take it wheat? A. Yes.

236 Q. The wheat that you buy in the country is not deliverable under the rules of the Chicago Board of Trade because of the quality of it?

A. Well, that is too broad, because there is a lot of it that is deliverable.

Q. Well, that which you buy in Kansas or down that way is not of a grade to be delivered here?

A. Oh, yes, lots of it is. No. 2 red is all deliverable on our market here and is a very fine quality.

Q. What do you do with the grain that you buy outside that is not of proper grade to deliver on Board of Trade contracts?

A. Well, we handle it as merchants; that is, clean it and put it into shape, so that it will comply with the rules of the Chicago Board of Trade and the State of Illinois inspection.

Q. And where, as a rule, do you sell that grain that you buy in the country?

A. Well, we sell the off grades and the grades that are in demand locally to merchants on the Exchange, or to a cif broker.

Mr. Robbins: Cif?

A. Yes. That is just a term that will be understood by any body that is in the business—and direct to New York parties and Boston.

Mr. Jenks: (Q.) What proportion of the grain that you handle is delivered somewhere else other than on contracts made on the Chicago Board of Trade?

A. About twenty-five per cent. We deliver seventy-five per cent of our grain.

Q. On the Board of Trade? A. Try to, yes.

Q. And seventy-five per cent of the grain you handle, does not amount to more than one per cent of the contracts for futures that you have on the Board of Trade—is that correct?

A. Well, you are getting into pretty big figures now.

Q. Well, that is about right, isn't it?

A. Well, it may figure out that way, but I wouldn't want to say that, because I don't know.

Q. Well, it is pretty nearly correct, isn't it?

A. Well, it isn't fair to ask that question of me, be-
237 cause I don't believe that is a fair estimate. We handle —There is so much of this grain brought in here and cleaned up and fixed up, that you can't say—

Q. Well then, I will put it the other way, so that you will know. Is it not a fact that the whole of the actual wheat that you handle does not amount to two per cent of the amount contracted for for future delivery by your contracts made on the Chicago Board of Trade?

Mr. Robbins: Do you mean by that that you handle, that you deliver—

Mr. Jenks: Certainly I do; the whole wheat they handle. They handle it by receiving—

Mr. Robbins: Well, I mean deliver on contracts.

Mr. Jenks: No, sir.

A. No, you are wrong, Mr. Jenks, about that.

Q. Well, how much does it amount to?

A. Oh, you are wrong about nine per cent.

Q. You think it would amount to ten per cent?

A. I think so, in our case; yes sir.

Q. Then you think that the whole of the wheat you handle in a year, receive and deliver, amounts to as much as ten per cent of that which you contract for on the Board of Trade for future delivery? A. Oh, yes, easily.

Q. Would it go more than ten per cent?

A. Yes, it might [a] good years.

Q. Well, as a rule?

A. Well, say ten to fifteen per cent; put it that way, to be fair.

Q. I want to get at it as nearly as you can?

A. Yes, I understand what you are trying to do.

Q. Now, in the past two or three years has your company had a large number of customers?

A. Well, we have had a moderate number of customers.

Q. About how many? A. Oh, I couldn't tell you.

Q. Will they amount to a thousand?

A. No, no, nothing like that.

238 Q. About how many?

A. About two or three hundred.

Q. Well, don't you think you have more than that?

A. Well, that is an estimate, you know. That's a good many people, you know, two or three hundred is.

Q. Now, tell us what per cent of the customers you have, for whom you deal on the Chicago Board of Trade, ever receive from you and pay to you—Wait a moment, I got that mixed—ever receive from you any wheat, what per cent of the customers that you have?

A. You mean the commission customers, trade customers?

Q. Yes? A. Oh, I couldn't answer that question.

Q. You can come pretty near it, can't you? Is it one per cent that ever receive anything?

A. Yes, I should think it would amount to that easily.

Q. One per cent? A. Yes.

Q. Would it be over that?

A. Yes; because we have customers who buy futures ostensibly to get the grain.

Q. Yes?

A. We get it because they know we handle a nice kind of grain, and they wait for the delivery of it.

Q. All right. What proportion of all your customers, what per cent? A. Well, say one per cent.

Q. One per cent? A. For an estimate.

Q. Then the other ninety-nine per cent never receive anything, do they?

A. Yes, oh, yes; they make a trade and every one of them is based on the actual delivery of the property.

Q. But I am not talking about that? A. Yes, sir.

Q. I am talking about their actually receiving it from you and taking the stuff and paying dollar for dollar upon the wheat, your commission customers?

A. Well, you ought to ask the whole question when you put it that way.

Q. No, I put it just this way, now. I will ask the whole question afterwards. I want to get at the thing just about as it is, as nearly as you can? A. Read that last question.

(The question was read by the reporter.)

239 A. I couldn't answer that.

Q. I will put that question again, because it is mixed up? A. There is no use of trying to answer that.

Q. Isn't it a fact, Mr. Weare, that it is less than ten per cent of your whole commission customers who ever receive any wheat from you, or ever deliver any wheat to you actually, which wheat was paid for at the time of delivery?

A. Well, i should think that would be a liberal estimate, ten per cent.

Q. Yes. Now, isn't it true that you have a great many customers who have never received anything from you but cash, and never delivered anything to you but cash?

A. By contract, do you mean, public contract, order a purchase or sale on a contract?

Q. That order the purchase or sale of wheat, but they never received any, or delivered any to you—Isn't it a fact that a great many of your customers never—

A. Oh, certainly, certainly.

Q. Yes; and customers that you have had for years?

A. Not necessarily.

Q. Well, not necessarily, but you have had customers for sixteen years who never received anything and never delivered anything to you by the way of grain, haven't you?

A. I don't think but what all customers at times receive the grain and take it in and pay for it, and put it out again.

Q. Well, they are very sorry when they receive it, aren't they?

A. No, they are not, either. They are glad of it, lots of times.

Q. They are, are they? A. You are mistaken about that.

Q. You spoke of hedging contracts on the Board?

A. Yes.

Q. What do you mean by a hedging contract? Just assume that I know nothing about it, which is pretty nearly the fact?

A. It is a bargain made with a member of the Board of Trade to receive or deliver a contract for a commodity at a specific price at a specific time, under the rules of the Chicago Board of Trade.

Q. Well, that's just like any other contract for future?

A. That is correct, as you never said anything be-
240 fore in your life.

Q. That is what?

A. That is correct, as you never said anything before in your life.

Q. Then the word "hedge" don't mean anything?

A. Yes, it does.

Q. What does it mean? A. Insurance.

Q. Insurance on what? A. Prospective loss.

Q. Well, it is insurance against—

A. Well, that is the better word, "against" loss.

Q. It is insurance against loss?

A. Insurance against loss; not future loss, but insurance against loss.

Q. Insurance against loss? A. Yes.

Q. Now, we will suppose that you have the actual wheat on hand and you make a hedging sale of it on the Chicago Board of Trade; that hedging sale is made for future delivery, we will fix the time as now, and fix the time for delivery as July. Before July comes you sell that wheat that you have on hand somewhere else. How do you get rid of your hedging contract on the sale on the Board?

A. Go into the pit and buy it.

Q. How do you get a settlement of the two contracts, the one for sale and the other for purchase?

A. Deliver the wheat on our contract sold for cash.

Q. Do you settle that any other way than settling it through the clearing house?

A. I answered the other question before that.

Q. I know you did, but you don't always settle it by delivering the grain, do you?

A. Well, this question that you ask me asks what we did with the future contracts that we had had after we had sold the cash grain to some buyer of the cash grain, keeping the future contract that we had sold.

Q. Yes, and you say you buy it in?

A. Go into the pit and buy in the contract, deliver the cash grain on the one end and settle the trade on the other.

Q. How do you settle?

A. Under the rules of the Chicago Board of Trade.

241 Q. By settlement through the clearing house?

A. Yes, sir.

Q. Yes? A. That is a hedge.

Q. You also spoke of your having a contract for delivery of the commodity in the future month, and it gets up to the time of delivery and the price don't suit you, and you transfer that to some other month. How do you do that?

[Q.] Well, you have stated that wrong. If the price don't suit me, I deliver the grain.

Q. Eh?

A. But if there is a carrying charge, or if the future month is worth more than the month that my contract is in, I will buy in my contract accruing—

Q. Buy it in how?

A. On the Chicago Board of Trade from its members and sell it to some other man who wants to buy something and is willing to pay me for carrying it.

Mr. Robbins: For a future month? A. Yes, sir.

Mr. Jenks: Well, now, you don't make any delivery there?

A. Don't make any delivery on my contract?

Q. Yes; but there is no delivery?

A. Well, when the contract is consummated there is, when the time of it comes about.

Q. So you have got a contract to sell, and you made that as a hedge against grain that you have on hand? A. Yes, sir.

Q. When the time for the delivery comes?

A. And I don't see fit to deliver it.

Q. And you don't see fit to deliver it?

A. I buy in my contract.

Q. You change it over to a future month?

A. I buy in my contract.

Q. Well, you buy it in how?

A. Go into the pit and buy it where it is for sale.

Q. That is, you buy the same commodity for delivery some future month?

A. No, sir, for the same month that I have it going for.

Q. Very well, do you deliver the commodity on that?

242 A. When it comes around to the end of the month, and it has not been settled, I do deliver it. Of course, I get it from somebody else that I have got it coming from.

Q. But, as a rule, it has been settled, isn't that right?

A. No, sir; not as a rule. The delivery days are very heavy, Mr. Jenks.

Q. I know all about delivery days; but the whole of your deliveries don't amount to more than one per cent of your contracts?

A. Oh, well, that's pretty heavy, when you figure the amount of grain that is actually raised and traded in on all the Exchanges of the word.

Q. Well, the amount of grain that is contracted for on the Chicago Board of Trade, is immense, isn't it?

A. Some of the—Yes, there is quite a quantity of it.

Q. And compared with the amount of grain that is raised, it is immense, isn't is?

A. Well, I don't know what you would call it; it is pretty large business.

Q. Isn' it a fact, Mr. Weare, that the amount of grain contracted for on the Chicago Board of Trade in one year, exceeds the amount raised in this country by ninety-nine per cent?

A. Well, I would have to take a sharp pencil to answer that question.

Q. Well, don't you think that is so?

A. I couldn't answer it; that is out of my line.

Q. Now when you change the thing over, say, supposing you have open contracts for May delivery of wheat? A. Yes.

Q. You don't want to deliver it, and you want to change that over to July? A. Yes.

Q. You can do that on the Board under the rules of the Board without making any actual delivery of the wheat at the time you make the transfer?

A. No, you are wrong there. It is all based on the actual delivery contemplated at the time, sir.

Q. Yes, but the actual delivery is not made, is it?

A. Well, that is the province of the members, that they can settle the trades among themselves under the rules.

243 Q. That is what I am getting at? A. Yes.

Q. Now, as a matter of fact, aren't all of those trades generally from one month to the other settled under the rules of the Board of Trade and not by the actual delivery of the wheat? A. No, sir.

Q. Eh? A. No, sir; that is too broad.

Q. What is? A. That they are all settled that way.

Q. I didn't say so. A. Yes, you did.

Q. Eh? A. Excuse me, but you did.

(The question was read by the reporter.)

Q. He says that is too much?

A. That is too broad, I say.

Q. Now, what per cent of those exchanges from one month to the other result in the actual delivery of the wheat?

A. Well, on the basis of my former estimate, one per cent.

Q. Then the other ninety-nine per cent is mere offset or ringing up on the Board, and a settlement through the clearing house? A. Well, I will explain that to you—

Q. No, you needn't explain that. Isn't that true?

A. I can't do that without explaining it to you—I can't answer the question.

Q. Well, explain it then?

Mr. Harkless: It has been explained a hundred times here.

A. Well, I guess it is unnecessary for me to answer then.

Mr. Harkless: Well, say it is true, and that is enough.

A. I don't want to answer that way, because it isn't.

Mr. Jenks: What is the fact then?

A. Read the question.

(The question was read by the reporter.)

A. Well, that would necessarily follow by one per cent of the actual delivery—

Q. I thought so. Well, that is true, isn't it, substantially?

A. Well, on that estimate—

Q. Do you say yes? A. I say on that estimate, yes.

Q. Is the Weare Commission Company known in Chicago as a cash grain house? A. Well, I think they are.

244 Q. How many elevators do you operate, manage or control? A. Six.

Q. Aren't you interested in more than six? A. No.

Q. Are those all in Chicago? A. Yes.

Q. Or other places? A. All in Chicago.

Q. Well, don't you operate, control or manage—

A. Only five; that is a mistake.

Q. —control the management of others outside?

A. No, sir.

Q. No others? A. Our houses are all terminal houses.

Q. Now, in Chicago and as connected with the Chicago Board of Trade, are there some houses known as cash houses and others known as something else?

A. No, I never heard them designated just exactly that way. Of course, there is a sort of understanding that some houses do more future business than others. But they all do plenty of cash business.

Q. And they all do a whole lot of future business, don't they? A. Yes, sir.

Q. Now, what distinction do you make between a cash business and the futures which you mentioned?

A. I don't make any difference between it myself, because I think it is all based on the cash—

Q. Yes? A. That is my view of it.

Q. At the same time you know that the commodities are not all delivered, and they are not all paid for in cash?

A. Of course not; because they agree among themselves not to do it; make a contract that way.

Redirect Examination

By Mr. Robbins:

Q. Mr. Weare, in making your estimate of percentages to Mr. Jenks, in your business, do you include in the one per cent the grain that you delivered in your own cash business that you testified to on your direct examination?

A. Do I include that?

Q. Yes. Is your estimate based upon the business including your own cash business, or is it an estimate based upon your commission business?

A. Why, it is based on neither—on the basis of the Weare Commission Company's business.

245 Q. The entire business? A. Yes sir.

Q. How do you arrive at the volume of that business? To reach that estimate, did you count every sale or purchase or do you divide it in half? A. Divide it in two.

Q. Divide it in two?

A. Yes, because that makes a closed transaction. You know it takes two sides to make a trade always.

Q. One per cent, as I understand it, is the business where you deliver the property and get the money? A. Yes.

Q. And the ninety-nine per cent is the part that is settled in other ways? A. Yes, sir.

Q. Under the rules of the Board of Trade? A. Yes, sir.

Q. Is any part of that ninety-nine per cent settled by grain being delivered in to you, and then delivered out on other contracts? A. Oh, yes, lots of it.

Q. Lots of it?

A. Lots of it on delivery notices under the custom and manner of delivering grain; instead of running around with a lot of receipts you go around with delivery notices at the proper time.

Q. And that is included in the ninety-nine per cent, is it?

Mr. Jenks: That is included in the one per cent. * * *

Mr. Robbins: Well, let the witness state.

A. Well, that is a hard question to answer. I don't believe I can answer that, Mr. Robbins.

Q. As a matter of fact, do you know in your own business the amount of the business that is settled in that way? Would it come under your personal knowledge?

A. You mean the notices of delivery?

Q. Yes, the volume of them?

A. No, sir; I would not know that without referring to the books, and going over it with the bookkeeper, but the estimate that I gave here is what I know about in my business.

Q. What estimate do you refer to?

A. The estimate in the other question before.

Mr. Harkless: Mr. Jenk's question?

Mr. Robbins: Well, you mean the estimate you gave
246 to me, for the five million bushels on direct examination, or the estimate you gave Mr. Jenks?

A. Well, both of you. I figured both about alike in my mind when I answered your question, and when I answered his.

Q. Well, what in addition to the five million bushels you testified to have been delivered on your hedging contracts did you include in your one per cent, if anything?

A. Well, that is a question I couldn't answer, Mr. Robbins, because I don't know.

Q. Well, then, how can you give an estimate of one per cent?

Mr. Jenks: I will object to that question as not proper re-examination of your witness.

The Master: It may be answered; answer the question.

A. I was asked the question, Mr. Robbins to give an estimate that is my estimate of what per cent of actual cash delivery in our business was made by the Weare Commission Company, as I understood it.

Mr. Jenks: Compared with the whole contracts made.

A. Yes, and that was the one that I based the one per cent on.

Mr. Robbins: I don't understand you yet, Mr. Weare. The one per cent is the one per cent intended to be one per cent of your total grain business? A. Yes, for that time.

Q. Well, how do you arrive at the one per cent? Does it, or does it not include the five million bushels that you say were delivered in your cash grain business on your hedging contracts?

A. I see now what you want. Well, there might be a large quantity of grain go around up on the floor there delivery days, and notices go in and out that I would not know anything about at all.

Q. Yes?

A. And it might amount to ten or fifteen per cent of actual deliveries of stuff that I would not know about, Mr. Robbins.

Q. Then the one per cent does not include that?

A. No, the one per cent does not include that.

Q. That is in the ninety-nine?

A. The one per cent is actual cash stuff, we following that stuff out.

247 Q. And receive pay for?

A. Yes, that is what I want to get at.

Q. And the amount of the other— A. I don't know.

Q. You can't make an estimate at all?

A. No, I couldn't do that. I don't see how it could be done. Sometimes, you know, a notice merely—don't put this down—sometimes a notice will go around a half dozen times. It will come around to the same parties time and time again. It is all a delivery a cash delivery.

Mr. Jenks: Yes, but it is not an actual delivery of the stuff?

A. Yes, the receipts and numbers and everything else are right on the contract. It is a delivery contract.

Mr. Robbins: It is a delivery under the rules of the Board of Trade by notices? A. Yes, it is an actual delivery.

Q. Mr. Weare, Mr. Jenks asked you what proportion of your customers ever delivered the grain to you. In your business, aren't you buying from your customers— A. Yes, sir.

Q. —grain to arrive every day? A. Yes, sir.

Mr. Jenks: I was speaking of commission business.

Mr. Robbins: You include that in your question?
The Witness: No, I don't.

Q. You are speaking of the men who buy for future delivery—

Mr. Jenks: Their commission customers—that is all he is speaking of.

Mr. Harkless: Not country deals.
Mr. Robbins: You did not include that class of customers in answer to Mr. Jenks' questions?
A. I don't believe I understand you, Mr. Robbins. I want to understand it right, you know.
Q. Mr. Jenks asked you what per cent of your customers—

Mr. Jenks: No, commission customers.
Mr. Robbins: Well, commission customers—
248 Mr. Harkless: You are getting mixed up on country customers and future transactions on the Board of Trade.
Mr. Robbins: Well, if Mr. Jenks qualifies his question. You mean business done on the Board of Trade on commission?
Mr. Jenks: Yes, sir.
Mr. Harkless: For future delivery.
Mr. Robbins: That is all.

James Pettit, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified in rebuttal as follows:

Direct Examination

By Mr. Robbins:
Q. What is your business, Mr. Pettit?
A. I am Treasurer and Manager of the Peavey Grain Company.
Q. Is that company engaged in business in Chicago?
A. Yes, sir.
Q. What business?
A. We are engaged in buying and selling of grain, grain storage and to a small extent commission.
Q. You have elevators in Chicago?
A. We have, sir, in South Chicago.
Q. Does your business include buying grain in the country?
A. It does, sir.
Q. Now, explain that business?
A. We send our cards every night quoting prices on various varieties of different kinds of grain to some hundreds of correspondents, and as a result of those bids we receive in the morn-

ing telegrams from those parties selling us a greater or less number of bushels of each grain involved.

Q. Well then what do you do?

A. We either ship this grain east or abroad through southern routes or will bring it, as is generally the case, to our Chicago elevators, where we put it in store for future merchandising or for delivery on the Chicago Board of Trade on such future contracts as we may make against it.

Q. When are these future contracts made?

A. These future contracts are made instantly upon
249 our receiving notice of the purchase of the grain.

Q. When you don't deliver the grain upon the future contracts, but sell it to go elsewhere— A. We do.

Q. You do that sometimes? A. Yes, sir.

Q. Now, what do you do with the contract for future sale?

A. The ordinary procedure is for the party who buys the grain from us to assume the responsibility of our future contract; or in other words, we buy back our future contract from this party, and sell the party the cash grain involved.

Q. What proportion of your business, the purchase or sale on contracts for future delivery on the Board of Trade, is this hedging business that you have referred to?

A. A very large per cent. Our commission business is but a small item in our business.

Q. Say for the last year, about how much grain have you actually delivered and received pay for upon those contracts for future delivery by way of hedge in your grain business, as you have testified?

A. From the nature of our business we made deliveries but twice during the last year, on May contracts of 1901 and on December contracts of 1901; our deliveries on our open contracts now will not be made until the first of May, approximately. I should estimate that our deliveries in the two periods first mentioned were something like a million and one-half bushels, aggregating a receipt of possibly $800,000.

Q. Is your company engaged in the grain business in the northwest? A. It is, sir.

Q. It is the Peavey system of elevators, so-called?

A. Yes, sir.

Q. That is the late F. H. Peavey, of Minneapolis?

A. Yes, F. H. Peavey, of Minneapolis, was our President and the senior partner of F. H. Peavey & Company. F. H. Peavey & Company have the control, however, of the Peavey system.

Q. To what extent and during the last year, has your company made these contracts by way of hedge on the Chicago Board of Trade?

250 Mr. Jenks: You mean in bushels?

Mr. Robbins: Yes.

A. It would be difficult to estimate it. The nearest I could say would be several million bushels.

Cross-Examination

By Mr. Jenks:

Q. How many millions of bushels would you say?
A. I could not make a close estimate.
Q. Would you say a hundred millions? A. No, sir.
Q. Seventy-five millions? A. No, sir.
Q. Fifty millions? A. No, sir.
Q. Forty millions? A. No, sir.
Q. Thirty millions? A. No, sir.
Q. Twenty millions? A. No, sir.
Q. Fifteen millions? A. Less than that.
Q. Ten millions? A. I should say somewhat less than that.
Q. Well, isn't it more than ten millions?
A. I should hardly think so.
Q. About ten millions?
A. I should say somewhat less than ten million. I understand your question to refer to our future contracts on the Chicago Board of Trade?
Q. Yes? A. Yes, sir.

Mr. Robbins: By way of hedge, I think you said.
Mr. Jenks: No, sir.
Mr. Robbins: Well, that is what my questions applied to.

Mr. Jenks: (Q.) Did you make any contracts on the Board of Trade for futures, except by way of hedge? A. Yes, sir.
Q. For yourself? A. No, sir.
Q. For customers? A. Yes, sir.
Q. How much would those contracts amount to?
A. Very small proportion. We have but a small commission business, and do not solicit.
Q. About how much would it amount to?
A. Possibly a million bushels.
Q. A million? A. Yes, sir.
251 Q. Well, then, put the whole of your transactions together, the personal ones for the company and those that were made for customers on the Board, would they all amount to ten million bushels in the past year?
A. My estimate would be less than that.
Q. For the whole of them? A. Yes, sir.
Q. How much less?
A. I think I might estimate them as between eight and ten million.
Q. And how much in bushels would the contracts amount to for future delivery, which contracts were made by way of hedge?

A. Within something like a million bushels, or whatever the total might be or in other words, anywheres from seven to nine million bushels.

Q. Of the transactions for customers in the commission business, do you include both sides of the transaction in the million bushels, the purchase and the sale, or do you include only one side?

A. I understand the question to involve sales.

Q. Then you have included only one side? A. Yes, sir.

Q. The purchase and sales would amount to two millions?

A. Approximately, yes.

Q. And the purchase and sales by way of hedge would amount to something like fourteen to eighteen millions?

A. I should say so, yes, sir.

Q. Now, all of those contracts on the Board were made for future delivery? A. They were.

Q. Those where you sold were agreements that you would deliver? A. They were, sir.

Q. And where you bought they were agreements that somebody else would deliver and that you would receive?

A. That is correct.

Q. Now, what per cent of those transactions on the Board for futures resulted in a delivery, and what per cent resulted in settlements through the clearing house?

A. I should estimate that between fifteen and twenty per cent resulted in a delivery.

252 Q. But if your other estimate was correct this one is very much too high, isn't it?

A. Not if I understand you correctly. I estimated that our deliveries were a million and one-half and that our contract sales were from seven to nine million bushels.

Q. Yes, but you have got another million added now?

[Q.] How is that, sir.

Q. For the customers?

A. Well, I understood your question to involve our personal hedge sales.

Q. No, the whole thing?

A. Then you must reduce it correspondingly.

Q. What?

A. Then you must reduce the proportion correspondingly. The figures are a million and one-half deliveries, seven to nine million bushels hedge sales, making nine million bushels customers sales.

Q. Where did you get that estimate of a million and one-half resulting in delivery?

A. From my general knowledge of the business.

Q. Have you looked at anything lately to refresh your memory on the subject?

A. To be exact, when I was called here, I surmised that I would be asked the question, and I sat down and thought it out, and estimated approximately a million, six to seven hundred thousand bushels. I then went to one of our clerks, and asked him to take his delivery book and see if my estimate was approximately correct. He said that it should be reduced a couple of million bushels.

Q. Well, that was a pretty good reduction, wasn't it?

A. A large reduction—or a couple of hundred thousand bushels.

Q. What?

A. From sixteen to seventeen hundred thousand—fifteen hundred thousand.

Q. Did he say a couple of millions, or did he say a couple hundred thousand?

A. A couple of hundred thousand, of course.

253 Q. Now, I want to get at this just as nearly as your memory will enable you to do. You have said that you buy grain in the country, and as soon as you get notice that you can buy it at a certain figure, instantly you go on the Board of Trade and make a sale against that? A. Yes, sir.

Q. A hedge sale? A. Yes.

Q. Do you make that sale with the idea of delivering this grain, this identical grain that you contract to buy, in fulfilling this contract of sale on the Board?

A. Unequivocally, yes; provided the grain—

Q. What?

A. Unequivocally yes; providing the grain when it is received, fills the requirements of the grades of grain that are deliverable on contracts.

Q. Now, unequivocally, that is a pretty big word, but I will use it—is it not a fact that the most of the grain that you buy in the country is not up to the grade required under the rules of the Board of Trade for delivery on those contracts?

A. The figures will, without doubt, prove that statement to be true; yes, sir.

Q. My statement to be true? A. Yes, sir.

Q. Then, unequivocally, you don't intend to deliver that identical grain on these contracts that you make on the Board?

A. Not if it does not come up to grade; no, sir.

Q. No, and as a rule, it doesn't come up to grade?

A. A large proportion of it does not.

Q. Well then, how do you get rid of these contracts that you make there, the hedging contracts of sale that you make?

A. If, when the grain arrives, it has not the qualities of a deliverable grade, it will be bought at such a discount under our future sale as its merchandising value will justify. We then find a customer who is willing to take it off our hands,

our contract for future delivery, and take on our grain at such a difference as will give us the profit which we anticipated or are satisfied with.

Q. Then you always make a profit?

A. We hope to; we occasionally fail.

254 Q. You sometimes fail?

A. We have been known to.

Q. Well, where you make a failure of it the deal don't pan out right? A. That is it.

Q. Now, suppose you answer my question which was: How do you get rid of the contract of sale that you have made on the Board when the grain don't come up to grade?

A. We—

Q. Just keep your eyes on that contract. I want to know how you get rid of it?

A. Exactly. The party to whom we sell the cash grain—I speak now of the ordinary procedure—assumes our contract for future delivery; or in other words, sells us back a similar contract.

Q. Yes. Now are you a member of the Board?

A. I am, sir.

Q. Let's get rid of the idea of being a member of the Board. Suppose you sell that grain to a non-member. He doesn't assume your contract, does he?

A. No, but he either finds some one who does, or if he buys the grain on what we call a flat price, we at times go into the pit and buy back that contract, or, to be exact, we buy a future contract bearing the same provisions.

Q. The same commodity for the same delivery?

A. The same date—exactly.

Q. Now, isn't that the usual way?

A. Not with pure cash grain handlers, no sir.

Q. Well, are you pure cash grain handlers?

A. We call ourselves that; yes, sir.

Q. Pure, Simon pure. A. Yes, sir.

Q. You do deal some, though, on commissions?

A. We do to a small extent.

Q. But those customers are not pure and Simon pure cash grain handlers?

A. We don't take a certificate with them; we don't know.

Q. Take those customers for whom you deal—what proportion of them did you ever deliver any grain to, now, actual grain to? A. A very small proportion, indeed.

255 Q. What per cent of them?

A. Certainly not over five per cent.

Q. Do you think it would amount to one per cent?

A. I should think so; yes, sir.

Q. Do you think it would amount to two per cent of them?

A. I should think so.

Q. How many of those commission customers have you had in the past year?

A. I don't know that I ever have counted them—perhaps twenty-five or thirty.

Q. Give me the name of one to whom you actually delivered grain? A. I don't recall that, sir.

Q. Can you recall the name of any of those twenty-five customers? A. I can remember of them, but not over half.

Q. Did you ever deliver any grain to them? A. Sir?

Q. Did you ever deliver any grain to those whose names you can recall? A. No, I just replied that I did not.

Q. Do you remember of ever delivering any grain to any commission customers that you had? A. Oh, indeed, yes.

Q. Who was he?

A. I just replied that I didn't recall the identity.

Q. When was it?

A. My recollection is both in May and in December, which were the two delivery dates that I recall.

Q. How much did you deliver to those customers?

A. That I could not say.

Q. And you can't estimate it?

A. No; I could relieve you of that line of questioning, if I would say that all of our customers are cash grain handlers, I think, with no exception. We have no speculative business on our books that I know of, and our commission business is obtained by making our cash sales and it being convenient for those parties to do some future business with us. Our house is quite different from others in that respect.

Q. In what respect is it different?

A. In that we solicit very little business outside of the business that comes to us, through our personal contact with the grain handlers whom we have to do with.

256 Q. Then these customers that you have, and for whom you act, they are making hedging deals on the Board too? A. Exactly.

Q. Just the same as you are? A. Yes, sir.

Q. And in those hedging deals that they make, a very small proportion results in actual delivery?

A. I should estimate about the same proportion as I have cited for ourselves.

Q. They cannot be very heavy buyers of grain if, within the past year the whole amount would only be a million bushels?

A. Oh, indeed no, a very small business.

Q. Very small business. Generally, where are they located? A. Largely in New York, exporters.

Q. How does a cash grain house, known as such on the Board of Trade, differ from any other commission house on the Board of Trade?

A. The only difference which I have in mind would be that they would solicit little or no business outside or their own personal cash grain business. It is different from a commission house which solicits business of others.

Q. General speculative business of the public?

A. I would not put it so; no, sir.

Q. It would be just the business of others? A. Yes.

Q. And not of the public?

A. No, I would cut out the general speculative business.

Q. Then they solicit the general business of the public?

A. That is it; the public who are interested in grain handling.

Q. Have you any idea of the quantity of grain contracted to be bought and sold for future delivery on the Board of Trade in the past year?

A. Not the slightest idea of it; no, sir.

Q. Have you any idea of the amount of grain raised in this country, in the United States, within the past year?

Q. Well, I am aware that it amounts to many hundreds of millions.

Q. Many hundreds of millions? A. Yes, sir.

Q. Eh? A. Yes.

257 Q. How many?

A. Oh, several hundreds of millions, according to the crop estimates, which differ.

Q. How many hundreds of millions of bushels of wheat were raised in the United States last year?

A. Well, I would be ashamed to make an estimate, because I am not a statistician, and I probably would be a way off.

Q. Well, you don't know anything about it, do you?

A. Very little; I only know that it amounts to many hundreds of million.

Q. Corn the same way? A. The same way; yes, sir.

Q. Do you deal principally in wheat?

A. Wheat, corn, oats, rye, barley.

Q. Which do you deal the most in, in bushels?

A. In wheat and corn.

Q. Corn the most? A. Wheat and corn about equally.

Q. And your dealings in the actual commodities the past year, take wheat, how much did they amount to in bushels?

A. I should say from five to six million bushels?

[A.] In corn, how many bushels?

A. I should say from two to four million bushels.

Q. And oats, how many bushels?

A. Practically handled no oats, rye or barley this year.

Q. Now, we will [will] take corn. You bought all that corn in the country, didn't you? A. Not all of it, no, sir.

Q. Principally? A. Yes; say seventy five per cent.

Q. Seventy-five per cent? A. Yes.

Q. That corn you bought in the ear, didn't you?

A. No, all shelled.

Q. All shell corn? A. Yes, sir.

Q. How much of that corn was up to grade for delivery on contracts, according to the rules of the Board of Trade of Chicago? A. I should estimate 800,000 bushels.

Q. 800,000. How much of that wheat was of grade for delivery on contracts according to the rules of the Chicago Board of Trade? A. I should estimate 700,000.

258 Q. Of that corn that was up to grade, how much did you deliver on Board of Trade contracts for futures?

A. Every bushel.

Q. Of that wheat that was up to grade, how much did you deliver on contracts for futures?

A. Without exception, every bushel.

Q. Every bushel. Then you actually delivered a little more than 200,000 bushels more than your bookkeeper says your books show,—800,000 to— A. 700,000.

Q. 700,000? A. On a million and one-half.

Q. A million and one-half?

A. Which were the figures I gave you, I think.

Q Those are the figures? A. Yes, sir.

Q. What did you do with the rest of it?

A. The grain that did not come up to grade?

Q. Yes?

A. That such as we have not now in store, we sold in New York, Boston or abroad, Newport News, or elsewhere.

Q. How much of it have you now in store?

A. Is that a proper question.

Q. Yes?

A. That is a question regarding our business as it stands now.

Q. Very well, how much did you ship?

A. How much have we shipped?

Q. Yes. A. I couldn't tell you, sir.

Q. Well, the difference between what you shipped and what you have in store, shows the amount you shipped?

A. Yes, but I didn't say the amount we have in store.

Q. No, but you can tell how much you shipped from that?

A. I have no desire to evade the question, any proper question, but I question whether you would want to ask me anything regarding how our business stands to-day, or whether it would have any bearing on the matter.

Q. I don't care to know anything about that?

A. No, but should I answer either one of your last two questions, a subtraction would tell you the rest.

259 Q. Yes, but I am not good at figures?

A. But others may be that are here.

Q. Eh? A. Others who are here, may be.

Q. Well, you don't want to answer?

A. I have no desire whatever to evade your question, excepting I would like to avoid making any statement as to our grain in store or grain on hand at the present time.

Q. Do you know how many cash grain houses there are in Chicago? A. I do not; no, sir.

Q. Do you know how many speculative houses there are in Chicago who are members of the Chicago Board of Trade?

A. I know nothing about that, sir.

Q. Do you know how many members there are of the Chicago Board of Trade? A. I don't know that.

Q. How long have you been a member?

A. Since June of 1898.

Q. Have you been a cash member there and do you do business on the flour yourself? A. Yes, sir.

Q. Do you know how business is done there? A. I do.

Q. Do you know anything about ringing up deals there?

A. About what.

Q. Ringing up deals? A. Ringing up trades?

Q. Yes. A. You refer to future contracts?

Q. Any contracts? A. I do; yes, sir.

Q. Does it relate to anything but futures? A. Yes, sir.

Q. Cash? A. Yes, sir.

Q How do they ring up a cash deal?

A. Why, if I had a hundred thousand bushels of wheat bought from you at seventy-five cents, and you were unable to, or did not desire or for some reason it was not best to hand me that wheat, and I sold it back to you for seventy-six cents, you would hand me a thousand dollars.

Q. What would I give you a thousand dollars for?

A. Because you—the price you bought it back at was a thousand dollars in excess of the price you sold it to me for.

260 Q. Is that the usual manner or custom of ringing up deals there on cash grain?

A. No, sir; there is comparatively little of it done. It is done.

Mr. Jenks: Read the question to him. I guess he doesn't understand it.

(The question was read by the reporter.)

A. Oh, yes.

Q. Now, what is the usual custom of ringing up deals there on future contracts? A. Exactly identical.

Q. Just the same? A. Yes, sir.

Q. Suppose we ring it up before the contract has matured?

A. There is no difference whatever in the procedure.

Q. Just the same thing?

A. Yes, sir; you may have sold to me contracts for May delivery of 100,000 bushels of wheat; I may have agreed to sell that back to you at one cent in excess of the price you sold it to me, in which case you hand me through the clearing house a thousand dollars.

Q. And that would end the two contracts?

A. Yes, sir; as far as we were concerned; but by no means as far as the Board of Trade is concerned.

Q. But it would end the two contracts if we were both members of the Board, wouldn't it?

A. No, sir—that is, between you and me; it would; but the contract still lives.

Q. Wouldn't it? A. Not by any means.

Q. You and I are the only ones— A. Oh, no.

Q. We are dealing with each other?

A. No, sir; a contract on the Board of Trade, as I understand it, is like a physical impulse, it goes on forever, until it is settled by a delivery.

Q. But you and I are both members of the Board?

A. Yes, sir.

Q. We are speculating on our own account; some day I have confidence that wheat is going down— A. Yes.

Q. And you have confidence that it is going up?

A. Yes.

261 Q. I say to you "I will sell you 100,000 bushels of wheat for July delivery at seventy cents"; you say that you will take it; it runs along a month, and you conclude that you have made a mistake. I conclude that I made a mistake; and we meet on the Board; you say to me, "I will sell you 100,000 bushels of wheat for July delivery at seventy-one" and I say, "I will take it". The trade is made. Now, how do we close those two contracts?

A. We would close it in the way I have described.

Q. That is, I would have to give you how much money?

A. A thousand dollars on the 100,000 bushels of wheat, a cent difference.

Q. Just a thousand dollars, that is it, and that would be paid through the clearing house? A. Yes, sir.

Q. What would become of that wheat?

A. Why, in a sense you are correct; that is a purely speculative deal you are referring to.

Q. Exactly, neither of us had the wheat? A. No.

Q. And neither of us wanted it, but we did want the money there was in it, and we had that little deal between ourselves. Now, as between us that ends both contracts, don't it?

A. In a sense, yes.

Q. Well, as a matter of fact? A. Yes.

Q. Eh?

A. Yes we are through. You are speaking from a speculative standpoint.

Q. Why yes, I am a speculator; that ends the whole business, doesn't it? A. Yes.

Q. Now, there is another way of ringing up deals there, isn't there, where you take in parties of two or three or a half dozen, and they find they have sold around so that it comes back to the first seller?

Mr. Robbins: Now, I want to object to that—

Mr. Jenks: They ring them up, don't they?

Mr. Robbins: —as an unnecessary reiteration of what was gone into in the defendant's own evidence.

The Master: It is getting late, Mr. Jenks, and as you have got what you want out of this witness—

262 A. I could easily answer that; the ordinary procedure, so far as our experience goes would be for us to deliver, if the contract is five thousand bushels, five thousand bushels of wheat certificates to you, and you deliver them to Jones, Jones to Smith, Smith to Williams and each one of those contracts would be closed by that, and the man who wanted the wheat would have it at the end.

Mr. Jenks: That is the time before delivery comes?

A. Yes.

Q. Suppose I had it at the time, before the time of delivery, is there any such thing as ringing up before the time of delivery?

Mr. Robbins: I object to that for the same reason, and as not proper cross-examination.

Mr. Jenks: But it is proper cross-examination.

Mr. Robbins: It is a reiteration—

Mr. Jenks: To find out how much this witness knows about what he has been testifying to.

The Master: He may answer that question.

A. Assuming that you can find the two parties to the transaction you have referred to, who have bought and sold a certain amount on a similar contract to and from each other, it would be rung up in exactly the manner which we have discussed.

Mr. Jenks: That is all.

Charles A. Weare here resumed the witness stand for the purpose of correcting his evidence, and testified as follows:

The Master: Mr. Weare wants to correct his testimony.

A. In my estimate in figuring in my head I made a mistake. The delivery of—On my estimate of wheat for the time mentioned would amount to nearer three per cent than one per cent, Mr. Jenks; that is what I wanted to correct; my statement.

Mr. Jenks: (Q) Now, Mr. Weare, since you have made that correction, I wish you would look at your books, and—

A. Look at my books?

263 Q. Yes. And see—Just look at the books and see if one per cent is not too large.

Q. Well, it is on my estimate that I am correcting—making this correction, because it actually shows so on this piece of paper that I am figuring on here.

Mr. Jenks: I think I am pretty well posted myself on those things. Of course, I don't know about your business.

A. No.

Q. But if you look at your books, I think you will find that one per cent is too high. Just look at your books, and come in the morning.

The further hearing of said cause was here adjourned to April 26th, 1902, at 9:30 o'clock A. M.

April 26th, 1902, 9:30 o'clock A. M.

Parties met pursuant to adjournment.

Present: Counsel for respective parties.

It is stipulated that at the time of the filing of this bill the defendant, the Christie Grain & Stock Company, was and ever since has been posting in its office in Kansas City the greater part of the continuous quotations collected upon complainant's Exchange, and transmitted to the telegraph companies; and was also during said time purchasing from the Western Union Telegraph Company and posting the ..... minute quotations of prices upon Complainant's Exchange; that said continuous quotations are furnished by the said Western Union Telegraph Company to at least six different grain commission men in Kansas City without objection of complainant, and that such quotations are by said commission men posted at once upon blackboards in their offices.

Defendant however claims that these continuous quotations posted by it are not posted until first made public in Kansas City, which last proposition the complainant denies.

264 It is further agreed that during all the period above mentioned, said defendant Christie Grain & Stock Company, has also been posting on its blackboard in its place of business, market quotations of prices made on the following Exchanges: New York, Minneapolis, St. Louis, Kansas City, Memphis, Milwaukee, New Orleans, and also from Liverpool, London and other European markets.

That complainant reserves the right to show that such quotations of other markets are not the continuous quotations, but only occasional quotations of prices on such markets.

A recess was here taken until 12:00 o'clock noon of this day. At 12:00 o'clock noon of this day parties met as before, when the following proceedings were had:

Frank B. Rice, produced as a witness on behalf of the complainant, having been first duly sworn, testified in rebuttal as follows:

Direct Examination

By Mr. Robbins:

Q. What is your name? A. Frank B. Rice.

Q. What is your business? A. I am a miller.

Q. Connected with what company?

A. The Star & Crescent Milling Company.

Q. In what capacity? A. Vice-President and Secretary.

Q. What is the extent of the business of your company?

A. We consume about 6,000 bushels of wheat a day.

Q. Is your business to sell to domestic markets or to foreign markets? A. Both.

Q. In your business do you resort to what is commonly known as hedging upon the Chicago Board of Trade?

A. Very largely.

Q. Will you explain this hedging from the miller's standpoint?

Objected to.

Q. According to what is done, and under what circumstances it is resorted to.

265 Mr. Jenks: I object, because he asks him to do it from the miller's standpoint, which is immaterial here.

The Master: Overruled. He may answer.

A. We are forced to deal in options to protect ourselves from possible losses, and we do it in this way: For instance, I get a bid from New York, Boston or abroad for so many barrels

delivered, which means to us so many bushels of wheat. Now, it is impossible for us, or may be impossible for us to procure that wheat at that time. To eliminate speculation, we go in and buy what is known as an option. Now, in the course of events the cash wheat arrives from the country. As I buy these country arrivals, I dispose of my options. We use it as an insurance. If the market goes up, and we have failed to buy wheat, why we meet with a severe loss, because milling at the present time is conducted on such very small margins, that we could not stand a half cent advance or loss in the market.

Mr. Robbins: (Q) What would be the effect upon the price of flour, if you were debarred from making these hedges?

Objected to as immaterial; objection overruled.

A. The effect on the price of flour—Of course, I can't state absolutely what the effect would be—but presumably the miller would have to have a larger margin of profit to protect him against possible fluctuations in the wheat market.

Mr. Jenks: I move to strike out the answer as based upon a presumption.

The Master: Yes, I think that is rather badly expressed, but if he is an expert—

Mr. Jenks: That is the only way he can state it.

Mr. Robbins: How long have you been in the milling business?

A. I have been in the milling business about eighteen years.

Q. In Chicago? A. No, sir.

Q. Where? A. Milwaukee and Chicago.

Q. Are you familiar with the milling business in all its features? A. I consider that I am.

266 Mr. Robbins: Now read the question that Mr. Jenks objected to.

(The question was read by the Reporter.)

Mr. Robbins: Change that to "millers".

(The question as amended was read by the reporter as follows: "What would be the effect upon the price of flour if millers were debarred from making these hedges"?)

The Master: In your judgment as a miller, and from your experience of eighteen years, as such.

Mr. Jenks: I object to the question as immaterial, and it calls for a mere guess of this witness.

The Master: Overruled; you may answer.

A. As a miller, I would have to ask a larger margin of profit to protect me against the possible fluctuations of the market or values.

Mr. Robbins: Would that be true of other millers?

A. Yes, sir.

Q. You speak of options. What do you mean by options?

A. By an option I mean, in other words, a privilege, or an option which gives me the privilege of buying a certain grade of wheat to be delivered during a certain period of time or month.

Q. You mean option to within a certain month to deliver, or an option to deliver or not deliver?

A. It must be delivered, if I have an option on wheat, the wheat must be delivered, if I don't sell it out.

Q. Well, does the option consist in the right to deliver or not to deliver, or only in the right to select a day of delivery?

Objected to as leading; objection overruled.

A. An option, as we understand it, is a privilege of delivery during a certain time. If you will allow me to explain I buy a May option. It is the option of the seller whether he delivers on the 1st day of May or any time intervening between the 1st and the last day of May.

267 Q. Well, these contracts that you speak of that you make by way of hedge, are they made on the Chicago Board of Trade? A. They are, sir.

Q. In the pits there? A. Yes, sir.

Q. And are contracts for future delivery? A. Yes, sir.

Q. To what extent does your concern resort to these hedging contracts in your business?

A. Well, I suppose we will average ten thousand a day.

Q. Ten thousand bushels a day? A. Yes, sir.

Q. Well, what proportion of the volume of your business in milling, I mean the volume in bushels of your business in milling, is represented by hedging? A. Well, there is a large—

Mr. Jenks: I object to that question for the reason that nobody can truthfully answer it.

The Master: Overruled; the witness knows whether he can answer it truthfully or not.

Mr. Jenks: If that question is repeated, I am inclined to think he will withdraw it.

The Master: Repeat the question, please.

(The question was read by the reporter.)

Mr. Jenks: Is that the way you want it?

Mr. Robbins: Yes, exactly.

Objected to as before; objection overruled.

A. Why, I can't answer that question, because I have no figures that I know of that I have ever kept.

Q. Give us your best estimate?

A. Well, as I say, we buy and sell possibly an average of ten thousand bushels a day of options.

Q. Well, is the larger part of your milling business hedged against on the Board of Trade?

Mr. Jenks: I object to that question as leading and otherwise improper.

The Master: You may state the volume of your business in bushels of wheat.

268 Mr. Robbins: He has stated that.

A. I said the large part of our business is protected by options or hedged.

Q. Do you know whether millers in the country resort to this same hedging? A. I know they do.

Q. In their business? A. I know they do.

Q. How general is that?

A. All mills of any capacity—

Q. Resort to it? A. As far as I know, resort to it.

Q. To a considerable degree as respects the volume of their business? A. Yes, sir.

Q. In your business, does it happen that you sometimes receive the grain on these contracts for future delivery?

A. Yes.

Objected to as leading; objection overruled.

Q. What do you say? A. Yes, sir.

Q. Your contracts of hedge are contracts of purchase to start with, are they? A. Not necessarily.

Q. In what case would they be contracts of sale?

A. When we are stocking up in the fall, for instance, if I were to have my mill idle, and had all my contracts for flour completed, and there should be liberal receipts of wheat, I would then begin to stock up and fill my grain elevator, as I would buy the cash wheat I would be forced to sell an option, so that the beginning of the deal would be a sale.

Q. Is that practice resorted to, to any extent, in that business?

A. I think by all grain men with mills of any capacity.

Q. And yourselves? A. Yes, sir.

Cross-Examination

By Mr. Harkless:

Q. Have you any hedges outstanding now, today, on the Board of Trade? A. Yes, sir.

Q. That is to say, you have a sale or a purchase outstanding now, which is it? A. At the present time I have a purchase.

Q. To be delivered when?

A. To be delivered during May; I hope the first of May.

269 Q. Your business, however, is the business of milling? A. Yes sir.

Q. You are not engaged in the business in speculating in grain? A. In no way.

Q. You buy your grain solely for the purpose of making flour? A. We do.

Q. You can't deliver this flour in fulfillment of any contracts you make on the Board of Trade, can you? A. No, sir.

Q. Why not?

A. Because we buy wheat or sell wheat. We couldn't very well deliver a product of the wheat.

Q. Well then, you don't expect to ever do so, do you?

A. I don't expect to deliver flour on wheat contracts.

Q. Well, what do you expect to deliver on them.

A. You refer now, of course to options.

Q. I am not talking about what you may be required to do?

A. No, I am going—

Q. Just wait a moment now. I am not asking you to construe a contract? A. No, that's right.

Q. But the question is now: you don't expect to make deliveries, do you? A. Of wheat?

Q. Of the wheat? A. At the present time, no, but I have.

Q. Well, I am speaking now generally?

A. Generally, no.

Q. You don't expect to do that, eh? A. Generally, no.

Q. No. And then that is not in your mind at the time you made a deal on the Board at all, is it? A. No, sir.

Q. Now, you say that nearly every day you make a hedging deal on the Board, don't you? A. Yes, sir.

Q. And that hedging deal, as a rule, is about equivalent to your average results in the production of flour corresponding—

Mr. Jenks: Four thousand more.

Mr. Harkless: Bought or sold—

A. The average, I suppose, of our trades, is in the neighborhood of 10,000 bushels a day; not necessarily always bought.

270 Q. What do you mean by that, the buying and selling side both? A. Yes, sir.

Q. What do you buy to-day?

A. I buy a cash wheat sometimes. To-day I bought cash wheat and sold July.

Q. Well now, you know pretty well about the custom and practice of millers generally on this subject, don't you?

A. Yes, sir.

Q. You have advised us that you do and I presume you do, and then I suppose they do business about the same as you do, having in mind the same object and purpose, don't they?

A. That is the idea.

Q. Yes. You know as a matter of fact that you don't have to deliver anything on those contracts unless you want to?

A. Unless I want to, no, that is right.

Q. Yes. You know as a matter of fact that you don't have to receive anything on them, unless you want to?

A. That is so.

Q. And you know that you are under no obligation to either deliver or receive, but that you may go on the Board of Trade at any time before the maturity of your contract and close it out, and get the difference in price, don't you?

A. Or give the difference.

Q. I say, or give it? A. Yes, sir.

Q. You know that that can be done at all times?

A. Yes, sir.

Q. And is that the usual practice on the Board of Trade?

A. Yes, sir.

Q. And has been for a great many years? A. Yes, sir.

Q. And is generally recognized by all millers, speculators and grain dealers of the country, isn't it? A. Yes.

Q. You say that, if I remember your language, you were compelled or forced to make a hedging deal. Now, you mean by that, that notwithstanding, or even supposing that the law of your State does not allow you to make a transaction without intending to make an actual delivery, still if it is to the best interest of your business you go on the Board of Trade and make those transactions to protect yourselves, don't you?

A. Yes, sir.

271 Q. You know that is so, don't you? A. Yes, sir.

Q. Notwithstanding the law? A. Yes.

Q. And you know that that is indulged in by millers as a rule, millers and grain men on the Board of Trade year after year? A. As a rule, yes, sir.

Q. You said that you sometimes receive grain? A. Yes, sir.

Q. Now, under what circumstances will you receive it rather than cancelling the deal?

A. When there is not a sufficiency of product being received from country points to supply our requirements.

Q. That is when the market conditions are not normal and regular? A. Well, not altogether.

Q. Well, as a rule that grows out of subnormal conditions of the market? A. Speaking generally, I should say yes.

Q. Did you ever deliver on those contracts? A. I have.

Q. Under what circumstances would you make delivery?

A. We have made deliveries when there was a corner in the wheat market, and values were forced to such a point that we could not use the wheat to manufacture flour—

Q. That is, where it was—

A. Where is was worth more as a speculative commodity than it was as—

Q. Where you got in a corner? A. No.

Q. And had to do it?

A. No, not necessarily; we were in no corner.

Q. Well, you only do as I stated before, when some abnormal condition existed?

A. Yes, it is abnormal, a force value is on it. We simply converted the stock in our elevators into a delivery.

Q. Now when you made a sale to-day,—I believe you said on the Board of Trade? A. Yes.

Q. You didn't have the wheat on hand, did you?

Mr. Jenks: He had it on hand; it was being manufactured.

A. Why, certainly I did.

Mr. Harkless: Did you have an option?

272 A. I had an option on hand.

Q. But have you wheat on hand that you expect to deliver? A. No, but I could deliver it.

Q. I am not talking about your contracts now. But you had none on hand that you even expected or intended to deliver, had you? A. No.

Q. What? A. That is right.

Q. And never do at the time you make them, expect to do so; that is, your situation is that it may possibly happen that it will be the best thing to do, but that you don't expect to do anything of the kind? A. Yes.

Re-direct Examination

By Mr. Robbins:

Q. When you make these contracts upon the Board of Trade, do you make them through a regular commission house?

A. I do.

Q. That is, when you buy or sell for future delivery you do it through some Board of Trade house? A. Yes, sir.

Q. You do not yourself make a contract? A. No, sir.

Q. You give your orders to them? A. I do.

Q. And they go into the pit and make their contracts with the members? A. Yes, sir.

Q. In their own names? A. Yes, sir.

Q. And when you give an order, a counter order, to close the trade, they render you a statement? A. Yes, sir.

Q. Showing the profit or loss, and pay you the difference between the buying price and the selling price? A. Yes, sir.

Q. That is all of your connection with the business?

A. That is all, yes.

Q. What orders did you say you had on hand, purchased or sale? A. Why, I have purchased.

Q. Why did you say you hoped for delivery on the first of May?

A. Because there is not enough cash wheat reaching the market to supply our requirements.

273 Q. When should the delivery be made on that purchase, what is your purpose with respect to the wheat?

A. It is optional with the seller when that delivery is made.

Q. Yes, but assuming now that he elects to deliver on the 1st day of May, what are you going to do with the wheat?

A. I am going to immediately take it to my mill and grind it up.

Q. And you want to get it as soon as you can?

A. Yes, sir.

Q. And the earlier in the month you get it the better?

A. The better. I asked him to make deliveries to-day upon my contracts.

Recross-Examination

By Mr. Harkless:

Q. If he don't do it, what will you do?

A. I have no recourse.

Q. You have not?

A. No, sir—that is, if he don't deliver it on the first day of May.

Q. Well, suppose he don't deliver it the first day of May?

A. I can't do anything.

Q. You can't? A. No, sir.

Q. Got no remedy?

A. No remedy. I can go to him and offer him a premium to deliver me that at once, if he has a mind to accept.

Q. Now, let's see if you mean what you say. If he does not deliver the wheat in pursuance to the contract on the first day of May, do you mean to say that ends the contract? A. Oh, no.

Q. Well, that's what I want to know. What do you do?

A. Oh, I wait his pleasure.

Q. What?

A. I wait his pleasure until the last day of May.

Q. Well, suppose he don't deliver it then,—what are you going to do?

A. The last day of May, then I buy it for his account.

Q. That's what I want to know. Now, where do you buy it?

A. Through a broker at the Board of Trade.

Q. Well, then what? A. Well, it is bought in—

Q. How do you get anything out of that; what do you do with your other delivery then?

A. There is a difference—there will be a difference in values which will be adjusted.

274 Q. Well, adjusted—You will settle on the difference between the two? A. Being paid.

Q. And being paid to you? A. Being paid.

Q. And you know that he has a right to do that, don't you?

A. Yes, sir.

Q. And you are willing to do it, if he does do it?

A. There is no recourse that I know of.

Q. Well, I am not asking you about recourse now. That is the universal practice, isn't it? A. It is.

Q. Now, as a matter of fact when you buy that in, in order to close that deal and get the difference, you won't get the wheat at all will you? A. If it comes to the end of the month?

Q. Yes. A. No—

Q. Nor you won't deliver anything on your side of the transaction, nor receive anything, but you will just go into the pit and tell some fellow that you have bought that amount of wheat, and the other fellow says—Now, wait a moment!—and the other fellow says, he takes it, and that's all you have to do, and you go and settle the difference between what that fellow says he will take it at and what the other fellow agreed to sell it to you at; isn't that the fact? A. I am not very—

Q. No, just answer the question. Don't tell us about your contracts?

A. I can't answer it in that way. You are not posted quite as well as some people; you are asking in a rather peculiar way.

Q. I may not be very well—

Mr. Robbins: Can't you answer that by yes or no?

A. I cannot.

Mr. Harkless: What do you say then?

A. I will say that I would instruct my broker to buy for a certain account, for instance, you owe me that wheat, and don't deliver it. He would step into the pit, and would buy. He would state, "I buy for John Jones account", or for whom it may concern.

275 Q. Now, do you mean to say that, that he would buy that in the pit? A. I mean to say he would.

Q. What? A. I think he would.

Q. Did you ever see that done—Did you ever hear any man say that in the pit? Now, aren't you mistaken about it?

A. I have never heard any one—I have never heard the statement, but I am of the belief that that is the procedure they would take.

Q. Now, don't you know that when a sale is made in the pit by your broker, that he has nothing to do with the question of stating for whom it is sold, to the public there in the pit?

A. No, he has nothing to do with it.

Q. That is a matter wholly with him and his office? Isn't it?

A. That is right.

Q. Then you are mistaken about that statement, aren't you? Don't you want to withdraw that statement?

A. No. I think you misunderstand me, or perhaps I have not made myself clear.

Q. What is the fact about that?

A. My name would not enter into his statement in any way, shape or manner.

Q. Of course, you are sure of that—

A. At the time John Jones would be the one defaulting, not I.

Q. There would be nothing said in the pit about you?

A. No.

Q. Nobody knows excepting between the brokers themselves?

A. Wait a moment; you understand I am talking of the members, my broker and the other member.

Q. Yes.

A. I am unknown in the transaction. Now, you would be the one defaulting on the contract, he would be the one that would be closing it for your account.

Q. Well now, you have got it right?

A. That is the way I intended to have it.

Q. You have got it right now. Now then, what I want to ask you is, isn't it true, just as I stated a while ago, if they don't deliver that wheat to you on the 1st or the last
276 day of May, which is the option of the seller, that you will tell your broker to go into the pit and buy as much wheat, as he promised to deliver you at that time?

A. Certainly.

Q. Isn't that it? A. Yes, sir.

Q. Now, you will never do anything more with it, between you and this party, excepting to ask him to pay the differences between what he was to deliver, and what you have agreed to buy from some other fellow? A. Yes.

Q. Regardless of the question of whether you ever, in fact, receive anything from the other fellow or not, in the way of wheat, isn't that so? A. Yes.

Q. Isn't that so? A. Yes sir; that is it; that is right.

By Mr. Robbins:

Q. The case that Mr. Harkless has supposed is a case where a man defaults on the last day of delivery—Is that what you understand? A. Yes, that's what I understand.

Q. And you go on the Board of Trade and buy in for his account under the rules? A. Yes, sir; exactly.

Q. And charge him with that loss? A. Yes, sir.

Q. By Reason of his default? A. Yes, sir: certainly.

A recess was here taken to three o'clock P. M. of this day. At three o'clock P. M. the parties met as before, and the following proceedings were then and there had:

Arpil 26th, 1902, 3.00 o'clock, P. M.

Parties met pursuant to recess. ,

Present Counsel for respective parties.

Samuel E. Baker, produced as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Harkless:

277 Q. Mr. Baker, you have been subpoenaed in this case, I believe, to produce books of Bartlett-Frazier & Company which would enable us to get at the facts in reference to the total amount of stuff, of grain, dealt in by that house from May 1st, 1901, to December 31st, 1901, I believe, have you not?

A. Not in those terms, no.

Q. Well you have been subpoenaed to produce the books, haven't you? A. Yes, sir; I was asked to produce books.

Q. Well, now, have you brought them? A. No, sir.

Q. Well, you have them?

A. I don't know; you are indefinite. We have books, of course, but you indicate in your request neither the kind nor the quantity of books you wish.

Q. Well, I will ask you now—

A. I am not denying that we do have books, because we have books.

Q. Have you got in your office books that do show the facts in reference to the question I have just asked you?

A. Well, I don't know that it will show the facts in the form that you state.

Q. Have you got books that show anything?

A. I believe so.

Q. How do you know you have?

A. Well, that is all—I know it.

Q. Well, how do you know it?

A. Oh, I don't care to take the time to prove to you that I know it just at this present time.

Q. Well, then, the question I am asking you is, whether you have any books in your shop and kept there by Bartlett-Frazier & Company, from which it can be ascertained the amount of grain that they have dealt in, the total from May 1st, 1901, to December 31st, 1901?

A. I would not say definitely that it could be stated accurately.

Q. Well, have you got it where it could be stated approximately? A. Not without some effort to arrive at it.

Q. I haven't asked you about the effort. Have you got them from which it could be ascertained approximately?

A. I don't know that we have?

Q. You don't know? A. No.

Q. Well, do you know whether you have got any books at all or not? A. Yes sir; that goes without saying.

278 The Master: Mr. Harkless, Mr. Baker is the head of an office where there are fifty or seventy-five clerks. He may not know what is in any particular book.

Mr. Harkless: I have not asked him that.

Q. I ask you if they have any books in their office from which these facts would appear or can be ascertained.

The Master: Or can be ascertained.

Mr. Harkless: That is what I asked him.

Q. Have you?

A. I say, I would not answer that we have or have not.

Q. Well, because you don't know?

A. I don't say because I don't know.

Q. Well, on what theory do you put it?

A. Because I am not ready to say, to give this information of my own volition.

Q. Not ready to? A. No.

Q. Then you decline to do it?

A. I do at the present time, yes.

Q. Well, will you do it at any other time?

A. I can't say that I would.

Q. Will you fix any time in which you will do it?

A. No. I would not fix any time.

Q. You would not agree to do it at all then, at any time?

A. Not so far as I know now.

Q. Well, whom have you talked with about it, as to whether you would or would not?

A. Well, I decline to answer the question.

Q. You decline to answer that? A. Yes, sir.

Q. Did you talk with Mr. Robbins, the attorney for the Board of Trade? A. I say, I decline to answer that question.

Q. Do you decline to say whether you talked to him or not?

A. Well, I decline to answer the question in any way, shape or manner.

Q. Do you decline to state whether you have talked to Mr Robbins at all about it?

A. I decline to state anything in regard to that question in any way, shape or manner.

279 Q. Or any other question? A. Well I dont' say that.

Q. Well, now, I will ask you, isn't it a fact that you did talk to Mr. Robbins about it, and he told you not to do it?

A. Oh, I have answered that question.

Q. Well, answer it again?

[Q.] Well, I refuse to answer your question any further.

Q. Very well. Isn't it a fact that you talked with him, and he told you not to produce it because it would show that you had not made any deliveries?

A. I refuse to answer the question, but I am frank to say that I believe that you are asking that question from certain conclusion in your own mind.

Q. Probably? A. Yes.

Q. Yes. Then you decline to give us any information on this subject, do you? A. At the present time, yes.

Q. Any other time? A. Well, I haven't said that.

Q. Well, will you fix a time when you will do it? A. No, sir.

Q. You won't agree to do it at any time, then?

A. Well, I haven't said that I wouldn't.

Q. Well, I will ask you to fix a time now when you will?

A. I am not prepared to fix a time.

Q. When do you think you will be?

A. I don't think anything about it at present.

Q. You don't think you are thinking about it at all, do you?

A. I am not saying anything about it at all. I say I am not prepared to fix any time.

Q. Well, do you think you are thinking about it at all?

A. Well, I don't think that I need to answer that question.

The Master: Oh, it seems to me you have gone far enough.

Mr. Harkless: Well, that's all.

By Mr. Robbins:

Q. Do you know Mr. Robbins by sight?

A. No, sir; I never met that gentleman.

280 By Mr. Harkless:

Q. Your house is a member of the Board of Trade, isn't it? A. Yes, sir.

Q. What position do you occupy in reference to this house of Bartlett-Frazier & Company?

A. I am in the employ of Bartlett-Frazier & Company.
Q. In what capacity?
A. Well, there is no contract specifying my capacity.
Q. What do you do?
A. There is nothing on record that specifies the capacity I work under.
Q. What do you do there? A. I do lots of things.
Q. What are they? A. I am not prepared to answer.
Q. You won't tell what you have to do? A. No.
Q. Have you any business that you are in charge of there?
A. I am in the employ of Bartlett-Frazier & Company; that is sufficient.
Q. Well, what do you do; do you shovel grain?
A. I am not ready to answer the question.
Q. You won't tell us what you do there? A. No, sir.

By Mr. Jenks:
Q. Are you the chief bookkeeper there? A. No, sir.
Q. Have you charge of the bookkeeping there?
A. I have been a bookkeeper in my day; but I am not a bookkeeper at the present time.
Q. Have you charge of the bookkeeping there?
A. I am not prepared to say.
Q. Because you don't know?
A. In answer to that specific question, no.
Q. Who is in charge of the books there?
A. Well, you would have to come to the office to find that out.

Mr. Harkless: Who has charge of the option book?
A. You would have to come to the office to find that out, too.

Mr. Jenks: Do you know?
281 A. Well, I am not prepared to answer your question.
Q. Did you talk with any one before you came here as to the books of Bartlett-Frazier & Company? A. No, sir.
Q. Are you, Mr. Baker, a member of the Board of Trade?
A. No, sir.
Q. Were you ever? A. No, sir.
Q. What members of the firm of Bartlett-Frazier & Company are members of the Board of Trade?
A. All of the members are members of the Board of Trade.
Q. How long have you been employed by that firm?
A. Since 1895.
Q. Do you keep a book or books there which shows or which show the quantity in bushels of grain contracted to be bought or sold on the Chicago Board of Trade for future delivery, covering the period of time from the first day of May, 1891—

Mr. Harkless: 1901.

Mr. Jenks: —1901, to the 31st day of December, 1901?

A. Well, no particular book to keep track of that.
Q. What?
A. No particular book to keep track of the quantity as you suggest there in the question.
Q. Well, would books that you have show that? A. Yes.
Q. All taken together? A. Oh, yes.
Q What books, by name, have you that will show that?
A. Well, that is a matter not easily given.
Q. Do you keep an option ledger or ledgers?
A. Yes, yes, sir.
Q. Is that the name by which you know the book?
A. Ledger, yes.
Q. Option ledger? A. Not necessarily option ledger.
Q. Do you call it a customers' ledger?
A. Well, we have such a book as a customers' ledger.
Q. Have you a book which you call the customers' option ledger? A. No, sir; not with that caption, no.

Mr. Harkless: That is all.

The Master: Is that all, Mr. Robbins?
Mr. Robbins: I haven't anything to ask.

282 The further hearing of said cause was here adjourned to Monday, April 28th, 1902, at 2:00 o'clock P. M.

April 28th, 1902; 2 o'clock P. M.

Parties met pursuant to adjournment.

Present: Counsel for respective parties.

Frederick S. Martin, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows, in rebuttal:

Direct Examination

By Mr. Robbins:
Q. What is your name? A. Frederick S. Martin.
Q. Mr. Martin, what is your business?
A. Why, I am in the grain business, handling cash grain, with the firm of Charles Counselman & Company.
Q. How long have you been connected with Charles Counselman & Company?
A. About fifteen years; I don't remember exactly.
Q. How much of that time have you been connected with and doing cash grain business?
A. They have been doing that business during that entire period.

Q. Do they own and operate elevators? A. Yes, sir.
Q. How many in the City of Chicago?
A. Well, we have three at South Chicago, and two down here on the river, down town, five large elevators; also one at Englewood, is six.
Q. Have you any elevators elsewhere? A. Yes, sir.
Q. How many?
A. I don't know just how many; but we have a line of houses along the North—along the Rock Island road, through Iowa, along the Rock Island road, through Southern Nebraska, over in Kansas; also up on the Burlington, Cedar Rapids, and Northern in Iowa, and on the Demoisne & Fort Dodge. I guess that about covers where our elevator and crib plants are.
Q. I wish now, that you would explain the course of your cash grain business? A. Well, our business is by—

283 Objected to.

Q. I mean, starting at the beginning, and explain just what is done in the business.

Objected to by counsel for defendant as immaterial to the issues in this case.

Q. Well, go on?
A. Our business is buying grain in the country, both at our own stations and from country dealers selling against it for future delivery in the city of Chicago; and bringing the grain on here and delivering that grain here in Chicago, or wherever we can to advantage, take and sell it east or abroad and buying back for future here in Chicago, whenever we can make a profit by shipping the grain east of Chicago.
Q. Instead of delivering it—
A. Instead of delivering it, practically, that is it.
Q. What do you do about sending out bids?
A. We send out bids every day.

Objected to as before.

Q. Explain that?
A. We send out bids every day in the afternoon, after the close of the exchange.
Q. Where?
A. All over the country, all over the grain country, the Western country.
Q. How long are those bids open?
A. They are open to be replied to, the reply to reach here before 9:30 the following morning.
Q. When the replies to these bids come in, what is the next step?

A. Our next step is at once to sell a future against the quantity that we have purchased.

Q. Where?

A. In the city of Chicago on the Chicago Board of Trade.

Q. In the pits of the Chicago Board of Trade?

A. In the pits, yes, sir.

Q. Contracts for future delivery? A. Yes, sir.

Q. Is your grain all brought to Chicago when you buy it?

A. Almost always; it is a very small proportion that is not; it is so small it is hardly worth mentioning. We occasionally send some to the gulf.

284 Q. How long does it remain in your country elevators? Does it remain for any length of time before it is shipped to Chicago?

A. Well, we usually as soon as we can get the cars, ship it right out.

Q. To Chicago?

A. Yes, sir; if the grain goes in the cribs, we very often will keep the grain and sell a future against it and then wait until it approaches the time for delivery, or in case the cash market comes closer to the future that we have sold, before the expiration of that future, I suppose that is the best way to put it, and we can market it previous to that time to advantage, and I mean by advanage, when there is money in it for us, why, then of course we bring it right to Chicago and sell it on the market and buy in the future; in other words whenever the cash property approaches closely to about even with that future, then that is the time that we dispose of our cash and buy in those futures.

Q. Cribbing applies to corn, does it not? A. And oats.

Q. To corn and oats? A. Yes, sir.

Q. When the grain is brought to Chicago, then what is done?

A. Well, when we bring it to Chicago, we take and do one of two things: If it is contract grain and grades and inspects, so that it can be applied on these contracts, we take and make the delivery here. Any off grades are bought on the basis of the option; it might be a half cent or a cent off, under the price of contract stuff. But of course, we have got it all hedged. We take and sell the off grades for eastern shipment or foreign shipment, wherever we can dispose of it, and buy in the future.

Q. These contracts for future delivery which you have testified to, contracts made against the purchase of the cash grain, have they any name on the Board of Trade?

Objected to by counsel for defendant.

Q. What are they called?

A. Why, we call them futures.

285 Mr. Jenks: Wait.
A. I beg your pardon.

Mr. Robbins: Is there any name such as "hedges" applied to them?

A. Why, I think that they are commonly spoken of as hedges.

Q. Can you tell what quantity of grain your house has delivered upon these so-called hedging contracts made by your house upon the Board of Trade—

Mr. Jenks: Answer yes or no.

Q. —since May 1st, 1901? A. Well, up to what time?

Q. Up to the present time—

Mr. Jenks: Answer yes or no.

Q. —or thereabouts?

A. Yes, I can, not up today, but I can up to the 21st of April.

Q. Have you figured that out from your books?

A. Yes, I figured it over.

Q. Well, please give the quantities of grain your house has delivered within this period upon these hedging contracts.

A. Well, I can tell by looking at a memorandum that I made, but briefly, first, to be exact about this, I will check that back, and see if my memory serves me correctly—

Mr. Jenks: Wait one minute.

A. —a million and three hundred—

Mr. Jenks: Wait one minute. I think I have a right to ask him a few questions now.

Mr. Robbins: Go on.

By Mr. Jenks:

Q. Do you keep the books? A. No, sir.

Q. Have you a recollection of the quantities without reference to the books?

A. Yes, in a general way, because we know every day just exactly what we have got sold and what we are going to deliver.

Q. Can you testify from your recollection without reference to the books, and without reference to whether the books
286 verify your memory in regard to the matter?

A. No, nor neither can you testify about anything else without refreshing your memory when it gets to be a year old.

Mr. Jenks: That's what I thought. I object to the witness testifying without the production of the books.

Mr. Robbins: Well, read the question to the witness.

(The last question of counsel for plaintiff, and the answer thereto were read by the reporter.)

A. That is the quantities, you know. I know about the quantities, but I am not talking about exact quantities.

Q. Well, give us your best recollection upon that?

A. One million three hundred and thirty-five thousand wheat, 3,495,000 corn; 3,555,000 oats; 24,000 bushels of rye.

Q. When you speak of having delivered those quantities upon these contracts for future delivery, what do you mean by "delivery"? What did you do to deliver?

A. Well, these quantities named, or about these quantities named, were made up in lots of 5,000 bushels each or about that, and when the days of delivery came around, this quantity of grain was delivered to these various parties to whom it had been sold, and we received their certified checks for these various quantities.

Q. Delivered by warehouse receipts?

A. Warehouse receipts; yes sir.

Q. These deliveries are all made upon these so-called hedging contracts?

Objected to by counsel for defendant as leading, and otherwise improper.

A. Yes sir.

Q. I mean by that, contracts for future delivery upon the Chicago Board of Trade? A. Yes.

Same objection.

Q. Made in the pits? A. Yes, sir.

Q. Does your house do any exporting business?

A. A large exporting business when the seasons are right.

287 Q. What if any part, does this hedging upon the Chicago Board of Trade play in the exporting business?

A. Well, the grain, when we first buy it, we don't know how it is to be handled to the consumer; it may be to the consumer in this country, it may be for shipment abroad, and we collect it together, sell against it, this so-called hedging, and then after we bring it to Chicago, we then begin marketing this grain, if we can, to any advantage, without making the delivery of the contract stuff. We have exported in seasons as high as twenty-five to thirty millions; then take it this last season, I don't believe our total exports, I don't think they will run to exceed four or five million, so that it is pretty hard to say exactly what proportion—

Q. No, you don't understand. What part does hedging play after you sell? A. Oh.

Q. After you sell the grain, is there any hedging?

A. Then after we sell this grain abroad, whatever quantity we have sold abroad, then we buy back that figure on the Chicago Board of Trade to the extent of the quantity we have sold abroad, and the same way with the domestic business.

Q. Well, is that grain, when you export it, sold deliverable here or exported by you to foreign ports and sold there?

A. It is sold there.

Q. Sold there?

A. It is sold what we call c. i. f. Liverpool, Hamburg, Antwerp

Mr. Jenks: What word is that he used?

Mr. Robbins: c. i. f.

A. C. I. F. The "C" stands for Cost; the "I" for insurance, and "F" for freight. It is spoken of commonly as Cif grain. It means delivered, cost, insurance and freight.

Q. That is, sold on the Chicago price to the buyer plus—

A. With the freight added.

288 Q. With the freight added?

A. Yes, freight and insurance added.

Q. Do you ever sell abroad before you have bought here and hedged by purchasing on the Chicago Board of Trade?

A. Yes, sir.

Q. Explain that?

A. Well, we take, for instance, we offer corn, and if we haven't the quantity of corn right on hand, of our own at our country stations, for instance, or in transit, sufficient to make the quantities which we would like to offer, why, we offer it on the basis that we can buy the future at in Chicago, add all the charges, freight, insurance, out-storage and so on, to our profit, and offer it and if it is accepted, then we buy the future and take it on delivery and ship that.

Q. Those futures are bought on the Chicago Board of Trade in the pits?

A. Chicago Board of Trade in the pits; yes, sir.

Q. And the contracts are deliverable at the same month named— A. Yes, sir.

Q. And how are those contracts carried out?

A. Well, we take the grain on delivery.

Q. At the maturity of the contract?

A. Well, it may be the beginning of the contract, because the contract might be for a whole month; it might be delivered on the first of the month.

Q. I mean the month of delivery? A. Yes, sir.

Q. And shipped it out? A. And ship that grain out.

Q. To what extent do you do that?

A. Well it is small the last few years, because we have usually had enough grain of our own coming forward, but we have very frequently done this, have taken, for instance, if our grain didn't happen to be there, if we had to ship it right away, we would take the grain from somebody here as a seller-the-month, for instance, which would be cash, and we [we] would give them ours when it came in.

Cross-Examination

By Mr. Jenks:

Q. Mr. Martin, are you a member of the Chicago Board of Trade? A. Yes, sir.

289 Q. How long have you been?

A. Seventeen or eighteen years.

Q. Do you do buying and selling of futures on the Chicago Board of Trade for Counselman & Co.?

A. Well, you mean our own business or outside business?

Q. I mean your own business?

A. Our own business, yes; but we are not in the commission business, you know, strictly speaking.

Q. Well, but you don't understand the question, I guess?

A. I beg your pardon.

(The question was read by the reporter.)

A. Yes, I do, part of it; not all.

Q. You don't do it all? A. No, we have others, too.

Q. What proportion of it would you say you do yourself?

A. Oh, it might be half; it might be a quarter; I don't know; sometimes we take and divide it up, the business.

Q. And sometimes you are not on the floor of the Board at all?

A. I am there every single day from the opening to the close.

Q. And it is your business there to see to the purchases and sales of futures? A. That is part of my business.

Q. Then in keeping posted as to the amount of business done by Counselman & Company from day to day, how do you do that, if you don't make all of the purchases and sales yourself?

A. Well, as long as I give the orders to these men to do it and they report the quantities, I keep a memorandum of the quantities. I may not know anything about other cash business, because we are not in the commission business, you know. We simply do our own business as a firm.

Q. That is what I am speaking of, too?

A. Yes, well, I just wanted to have it understood, that is all.

Q. Yes. Then the memorandum you keep, you don't keep that with you all the time? A. I do for that day.

Q. And after that do you keep the memorandum?

A. Why, we aim to be even or as near even as possible
290 every day when the Board closes on this cash business. We never gamble on grain, or sell a whole lot of stuff that we haven't got, or buy a lot of stuff that we don't know what we are going to do with. We aim to keep even.

Q. You don't speculate at all?

A. We don't speculate at all.

Q. Now, is the same Counselman who is in your firm connected with the firm of Counselman & Day?

A. The same man, Charles Counselman.

Q. You have designated the business of Counselman & Co. as a cash grain business. How does that differ from the business conducted by Counselman & Day?

A. I don't know anything about Counselman & Day's business, any more than I do about your business, or Mr. Robbins' business. They are entirely two different firms; they have no connection whatever in any way, shape or manner with each other, excepting that Charles Counselman is a member of both firms, and I don't know anything about their business. I have about all I can do to keep track of my own.

Q. Do Counselman & Day do a cash grain business also?

A. I don't know anything about their business.

Q. Is there any distinction made in the kinds of business conducted by different firms on the Chicago Board of Trade, as designating one a cash grain business and the other something else?

A. Oh, some men are shippers and some men are receivers, yes, in the cash business. I don't know anything about anything else.

Q. You never heard anything about a commission business, did you? A. Oh, yes, of course, but you are asking—

Q. Counselman & Day do a commission business, don't they?

A. I don't know anything about their business.

Q. Well, how do you know that anybody does a commission business on the Board of Trade? A. I don't understand that.

Q. (Read by the reporter.)

A. Why, that is what the Board of Trade is for; it is for a general commission business.

Q. Well, do you know that?

291 A. Well, you can only judge by what you see; but you are asking me something about something of my own knowledge about a certain particular firm, and I told you I didn't know, and I don't know.

Q. Do you know about other firms more than you know about it?

A. No, I only know about the business of our own firm.

Q. Well, how is it you know any commission business is done on the Board of Trade?

A. Well, because the Board of Trade is there for that particular purpose, to do a commission business.

Q. How do you know that?

A. That is what the Board of Trade was organized for.

Q. Who said so?

A. I think its charter reads that way, doesn't it?—organized for commission business. I don't know, but I think that is probably it.

Q. How much grain did the firm of Counselman & Co.—Change that word "grain" to "wheat"—buy in the country from May 1st, 1901, to April 21st, 1902?

A. How much did they buy all told?

Q. Yes. A. I don't know without looking it up.

Q. About how much?

A. Oh, I suppose probably four or five or six millions, perhaps more; I don't know without looking it up, Mr. Jenks.

Q. How much wheat during that time did that firm ship to Europe?

A. Oh, probably we shipped in the course of the year, this last year that you spoke of, somewhere probably around three quarters of a million. I don't know without looking it up. This last season has been a very poor one for exporting business, Mr. Jenks. Previous years were very good, but this last year for grain has been very poor in the exporting business.

Q. Did you ship wheat during that period to any other place in this country than Chicago? A. Yes, sir.

Q. To what places?

A. To the mills, various mills; we have a regular milling trade.

Q. Where?

A. In Michigan, Indiana, some in this state, Ohio, and so forth.

292 Q. Anywhere else?

A. Why we have others, but I—

Q. About how much wheat during that period did you ship to mills?

A. Oh, I should say six or seven hundred thousand bushels; it might run up a million, but I would say that to keep within the limit.

Q. Well, is it your best judgment on the subject?

A. Yes, I say that is my judgment. I could tell you exactly by looking it up.

Q. But you have not looked it up? A. No, sir.

Q. Did you look it up before coming here and testifying, to see how much wheat you delivered on contracts? A. I did.

Q. You got those figures from the books of your firm?
A. I took them from the delivery—copies of the delivery notices.
Q. Who furnished them to you?
A. Our own office. We have books designated for that purpose.
Q. Who keeps them? A. A clerk.
Q. And the clerk furnished the figures to you?
A. The clerk did not; I took them myself and checked every single item,
Q. From the books? A. From the books.
Q. Kept by the Clerk? A. Kept by the Clerk.
Q. None of them were kept by you?
A. None of them were kept by me; no, sir.
Q. How much wheat did you contract to sell for future delivery on the Chicago Board of Trade from May 1st, 1901, to April 21, 1902?
A. Whatever was the amount of our purchases.
Q. And what was the amount of the purchases?
A. Well, that I don't know. As I was saying just a few minutes ago, I don't know just what the quantity was without looking it up.
Q. Now, if I understand it, and I understand you, you mean to say that the quantity of wheat sold by your house on the Board of Trade for future delivery was the same quantity that your house had purchased in the country
A. The same amount that we purchased in the country, so far as our individual company's business was concerned.

293 (The question and answer were read by the reporter.)

A. I mean by "individual" so far as our company's business was concerned and consummated individually.
Q. So far as they were individually related to it?
A. And occasionally—we don't seek this business—but we occasionally have to do these hedges for other people, for the mills, for instance, and for other elevator interests. But this is very small; but we occasionally have to do it; that is the reason I spoke of it.
Q. Do you know how business is ordinarily done at the pits on the Chicago Board of Trade?
A. Well, I am not at the pits at all, Mr. Jenks, to stay there; I mean, and execute orders and so on, only as far as our own business is concerned, because, as I told you, we do almost no commission business; we do a little, such as I have alluded to here for a few mills and so on, but the general run of commission business, we are not in that business at all.

Q. Well, your purchases and sales on the floor of the Chicago Board of Trade that you have mentioned, were they made at the pits? A. Yes, sir.

Q. Well, now, is it difficult for you to answer the question as to whether you know how they conduct business at those pits on the floor of the Chicago Board? A. No, not difficult.

Q. Eh?

A. It is not difficult at all—simply to go into the pit, if I have ten thousand bushels of wheat to sell for future delivery—

Q. Say yes or no, that you know how they do it, or that you don't know how they do it.

A. Well, if you will tell me what you are getting at, I will answer your question.

Q. I am trying to find out if you know how they buy and sell for future delivery at the pits on the Chicago Board of Trade.

A. I told you that whenever we have an order—

Q. Well, do you know? A. Why of course I know.

Q. Yes. Now, did you ever at any time at those pits buy or sell anything for future delivery, except by way of a hedge?

294 A. Why, I don't understand that.

Q. Then we will read it over until you do.

(The question was read by the reporter.)

A. Why, as far as our own business is concerned, it would be for hedges. If it were executing an order for somebody else, why you will have to ask that question where he had his wheat and where he intended to deliver it.

Q. Do you know any difference between the purchase and sale for future delivery as a hedge, and for anything else, as it is done there at the pits? A. No, I don't.

Q. You do not? A. No.

Q. Well, what is a hedge?

A. Well, it is selling for future delivery.

Q. That is a hedge? A. (No response.)

Q. Did you ever buy for future delivery? A. Certainly.

Q. Is that a hedge too?

A. Well, we don't speak of hedges in that way.

Q. You hedge that way when you have sold something that you have not got, don't you?

A. No, that is not what I am getting it. But you are mixing up the words.

Q. That's what I am getting at.

A. You are mixing up the words. Hedging and two or three other things, buying for future delivery and selling for future delivery.

Q. That is hedging, is it, in your opinion, I just want to get it? A. Are you asking me a question now?

Q. Yes. A. I don't understand. Repeat it.
Q. That is hedging, is it? A. That is hedging, is it?
Q. If you buy or sell for future delivery, that is hedging?
A. That is hedging, and—
Q. Now, suppose you buy the grain in the country; you hedge against it on the Board of Trade by selling a future; then you ship that grain somewhere else— A. Yes.
Q. What do you do with that hedging sale that you have made?
295 A. Well, I'll tell you what we do with it. We take and buy in the quantity which we may have sold to some consumer.
Q. Only when you buy it in—
A. And we buy it in only and handle business in that way only when we can make a profit in the shipping of it; otherwise it goes on the delivery.
Q. That's all right; you have got one thing in your mind, and I am trying to get your mind on something else.
A. All right, sir; you put my mind on something else right now.
Q. Now when you sell the grain on the Chicago Board of Trade as a hedge against grain that you have bought in the country, and you afterwards ship that grain from the country somewhere else, how do you close that hedging sale that you have made on the Chicago Board of Trade?
A. I will tell you about that exactly, Mr. Jenks; I will tell you about that exactly. Supposing we should have—
Q. Oh, you needn't suppose at all. What do you do? You go on the Board and buy it in, don't you?
A. No, they don't; we take and ship that grain out.
Q. Well, you have shipped it?
A. Oh, just wait a minute. Don't get excited.
Q. You have shipped it? Answer the question.
A. We ship that grain from the country, we bring it to Chicago. Our grain mostly comes to Chicago. There isn't one one hundred thousandth part of it goes anywhere else. That is our business. Now when it gets to Chicago, we offer it on the market to some consumer where we can make an additional profit out of that grain; if we find the consumer so we can make that additional profit, we take and ship that stuff from Chicago on and buy in the hedge; if we cannot, why, then we take and deliver it if it is more than it would be delivered on contract. That is what we do.
Q. Now, when you buy in the hedge, do you settle the sale contract and the purchase contract by either paying or receiving the difference in the purchase and sale price, and settle through the clearing house?

A. You mean so far as the buyer of this grain is concerned?

296 Q. No. A. Well, make yourself plain then.

Q. Don't you understand anything? I asked you—

A. Well now just wait a moment. Don't let's have any such talk as that. Let's be perfectly straight and square with each other. Now, do that. Don't talk to me that way.

Q. I asked you in case you had bought grain in the country and sold it as a hedge on the Chicago Board of Trade; you afterwards ship that grain somewhere else— A. Yes.

Q. And sold it? A. Yes.

Q. —how you closed out the hedging sale that you had made in reference to it. I will now ask you if you close out that hedging sale by buying in the same commodity and quantity for the same delivery on the Chicago Board of Trade?

A. Yes, sir; buy in the same delivery, precisely.

Q. Then how do you settle the two contracts, one of sale and the other of purchase of that commodity for future delivery,—Do you do it by settling the difference between the purchase and sale price, and receiving the money or pay the money through the Board of Trade Clearing House?

A. Oh, it might run on—I can't tell that. It might run on, any particular transaction might run on to the day of delivery, and we might take the delivery of the stuff and then deliver it on our original sale.

Q. And deliver it on your original sale?

A. Why, to close it up that would be. We take it on the contract.

Q. Yes. Is that the only way that you close up those two contracts? A. Yes, I should say that is about the only way.

Q. That is the only way?

A. To make an actual settlement of it.

Q. What? A. To make an actual settlement of it.

Q. Well, that's the only way you do it, is it?

A. Well, I can't tell whether it will be the only way of doing it, because we might not—

Q. I don't ask you that, sir. I ask you what you do.

297 A. I am telling you we take and buy the stuff in.

Q. Of course you buy it in. A. Yes.

Q. Now, do these two contracts run until maturity?

A. Run to maturity?

Q. Or are they settled by ringing up?

A. That contract will probably run to maturity.

Q. Is that the usual course of those contracts, that they run until maturity? A. In shipping business of this sort?

Q. No, sir. A. In what?

Q. Hedging business on the Chicago Board of Trade?

A. Why they probably run to maturity.

Q. And you are testifying to that from your experience on the Chicago Board of Trade that those contracts are not settled until the property is delivered?

A. Well, the question—when a man buys or sells a thing he gives a delivery for that article.

Q. Right off?

A. Why, how can he get it right off if it is a future? It is ridiculous.

Q. Where you make contracts, hedging contracts, one of sale and one of purchase, because you have shipped the actual commodity, do those two contracts usually run in your business until the day of delivery arrives?

A. Oh, they probably would. I can't tell. There might be some other arrangement made by which, for instance, for the person to whom we had the original stuff sold might say he was willing to take it before the time of that delivery so in that case it would not run.

Q. Mr. Martin, don't you know as a matter of fact, that the most of the contracts made for the purchase and sale of grain for future delivery are rung up and settled through the Chicago Clearing House before the day of delivery arrives?

A. Some of them are, I suppose; yes; but the whole—

Q. Don't you know that the most of them are?

A. No, I don't know it. You are asking me for what I know of my own knowledge, but I don't know that. You only
298 know that perhaps that may be one of the things in the operation of things a mode of closing the trade.

Q. You are perfectly clear in your mind, are you, upon that subject? A. Upon what subject?

Q. The subject that you are now testifying about.

[Q.] Well, ask me a question, and I will reply to it.

Q. I did ask you.

A. Well, let's have it again then, so we will get it clear.

Q. (Continuing)—how much you bought from May 1st, 1901, to the 21st day of April, 1902?

A. Yes, and what answer did I give you?

Q. Well, what did you?

A. Well, you say, you are talking about how much we bought. I told you about how much.

Q. Now, about how much?

A. I told you I do not know exactly without looking up the books.

Q. Well, about how much did you say?

A. Well, about how much did I say? You have it right there.

Q. Well, about how much do you say now?

A. Oh, this is ridiculous.

Q. About how much?

A. I know very well what I said, and you do too. You have got it down there. Dont' try any such nonsense.

Q. Well, about how much did you buy of wheat between May 1st, 1901, and April 21st, 1902?

A. You have it there. I have testified as to that once.

Q. About how much was it? A. You have got it there.

Q. Well, how much was it? A. You have got it there.

Q. Do you know? A. Yes.

Q. About how much was it? A. You have got it there.

Q. Well, about how much was it?

A. Well, about how much was it? Go on.

Q. Yes, about how much was it in bushels? Will you answer? Do you decline to answer?

A. I don't decline to answer anything.

Q. Well, then answer that.

A. The question has already been put and answered.

Q. Well, then you— A. That is answered, too.

Q. Well, you decline to answer the question?

299 A. I didn't say that I declined to answer the question.

Q. Well, then answer me as to the number of bushels.

A. Will you please read the notes about that?

Q. I am asking you the question, Mr. Martin?

A. Will you tell me, Mr. Robbins, am I helpless?

Q. It is your duty to answer, and you need not ask Mr. Robbins.

Mr. Robbins: I object on the ground that the witness has already answered the question. Now, turn back and read the question of Mr. Jenks.

The Master: I think it is perfectly proper; it is a problem whether the witness remembers what he answered before.

The Witness: My point is this—

The Master: Give the point you have.

A. The point I have is this: He asked me what the quantity of grain was so far as wheat was concerned that we had bought from May 1st, 1901, to the 21st day of April, of this year. I told him—perhaps I replied to that in this way: That I never had looked that matter up to see what the quantity was, and that I couldn't state the quantity, and he said, "Well, about how much?" Well, I said, then we will say, about so much and so on, and I know what I told him then.

The Master: Just repeat it.

A. Oh, it might have been four or five or six millions, I don't know—

Mr. Jenks: Well, do you think that is about right?

A. I don't know. You want to know exact facts. I can go to the office, and find out and let you know by to-morrow afternoon.

Q. What did you do with the difference between that and one 1,335,000 bushels of wheat that you delivered?

A. Well, that is just what I answered once, but you got so turned around that you wouldnt' listen to it. Now, I will just tell you what we did with the difference. The difference whatever it is, we found consumers, buyers, for this difference, where we market it, Mr. Jenks, at a profit—

300 Q. What did you—

A. Wait a moment; let me tell you what we are doing with it—

Q. Do you deliver it anywhere? A. We do.

Q. Where? A.

Mr. Robbins: Wait a moment. I submit that this witness—

Mr. Jenks: (Q.) Where did you deliver it?

Mr. Robbins: I insist that the witness be allowed to answer the question.

Mr. Jenks: I insist that he tell me where he delivered it.

The Master: The questions are ruled out until the witness finishes his answer.

A. The difference was marketed to consumers, whatever the difference is, and, Mr. Master, when I made the statement of the quantity, it might be—I may be a half a million or a million out of the way.

The Master: It is approximately that. All right.

A. I don't know without I look it up. And this was taken and marketed to consumers after it reached Chicago, whenever it was possible to take and market that grain, and get a margin out of it—

Mr. Jenks: (Q.) Where did you deliver it?

A. Instead of delivering it—

Mr. Robbins: Wait a minute.

The Master: Let the witness finish his answer first.

A. Then we simply marketed to these mills or whoever happened to be a buyer for the grain, and the balance was delivered on the contracts here.

Q. Mr. Jenks: Where?

A. On the Chicago Board of Trade.

Q. Where did you deliver that which you did not deliver on the Chicago Board of Trade?

A. To mills and so forth wherever it happened to go.

Q. You don't know where? A. Not without looking it up.

Q. How much corn did you buy in the country between the first day of May— A. I don't know.

301 Q. —1901, and the 21st day of April—

A. I don't know. I will look that up.
Q. —April, 1902? A. I don't know.
Q. Have you any idea? A. I don't know.
Q. Have you any idea of the quantity?
A. I don't know what the quantity was.
Q. Can you tell within a hundred millions of bushels?
A. I don't know.
Q. Can you state within fifty millions of bushels?
A. I don't know.
Q. Can you state within twenty-five millions of bushels?
A. I don't know.
Q. Can you state within ten millions of bushels?
A. I don't know.
Q. Can you state within five millions of bushels?
A. Ditto.
Q. Can you state within two millions of bushels?

The Master: The same answer—you don't know?
A. The same answer, yes.

Mr. Jenks: (Q.) Can you state within one million of bushels?
The Master: The same answer. A. The same answer.

Mr. Jenks: Did you buy more than a million?
A. Yes, a great deal more.
Q. Eh? A. Yes, a great deal more.
Q. Did you buy more than ten millions? A. I don't know.
Q. Did you buy more than five millions? A. I don't know.
Q. Did you buy more than four millions?
A. The same answer.
Q. Did you buy more than three?
A. Three and two and one—put them all together?
Q. What do you mean by that, sir?

The Master: Well, I think we are getting a little out of the general order of examination. You mean you know that it was more than a million?
A. I mean this: I don't know the exact quantity, but it seems to be the part of Mr. Jenks to be very technical with me. Now, I could say probably about how much it was.

302 Mr. Jenks: Well, how much?
A. Oh, I prefer not to answer that question until I look it up and then I would be very glad to do it.

The Master: You may say approximately; that would save you looking it up, and it would save Mr. Jenks the trouble. Approximately, about how many, a few millions.

[Q.] Well, I don't know as I can say; roughly, ten million.
Q. Ten millions? A. It might run fifteen.

Mr. Jenks: (Q.) Now, it is your best judgment and recollection that you bought between ten and fifteen millions of bushels of corn within that period? A. I didn't say that.
Q. What? A. I didn't say that.
Q. What is your best judgment on the subject?
A. I will simply answer the question and say ten million. I said it might run fifteen and then you turn around and assume that I said from ten to fifteen. I didn't say so.
Q. I asked you if that is your best judgment, that it was from ten to fifteen million?
A. I think it was probably around those figures there.
Q. Five to ten millions?
A. Well, I don't know without looking it up. It is a very hard matter to remember quantities of those sorts, so far back, you know.
Q. How many bushels of oats did your company buy in the country between those two dates?
A. Well, the same reply would be given about them.
Q. Well, about how much?

The Master: Well, can you tell within a few millions of bushels?
A. Yes, say seven to ten roughly, but I should want to verify that, look it up.

Mr. Jenks: About how much rye did your house buy in the country within that same period?
A. Oh, a very small quantity of rye.
303 Q. About how much?
A. Oh, it would not exceed 100,000 bushels, I don't think.
Q. Now, you do think that you bought from ten to fifteen million bushels of corn? A. I didn't say that.
Q. What became of the difference between what you bought in the country and the 3,445,000 bushels of corn that you delivered on the Board of Trade?
A. Oh, the difference was simply marketed in the usual way; some of it when it would get here would not grade to contract grade.
Q. How did you sell that?
A. And it was marketed and jobbed outside.
Q. What became of the difference between 3,555,000 bushels of oats and the quantity of oats that you bought in the country during the same period?
A. It was marketed whenever we could find a buyer.
Q. Marketed outside? A. Outside for cash,

Q. Now, as you have already said that when you bought this quantity of material, you went and sold it on the Board of Trade as a hedge? A. Yes.

Q. And that you closed it out—

A. Let me correct you on one thing. I didn't say we sold every bushel; that we may have sold some as cash somewhere else direct to the consumer, but the bulk of it was sold on the Board.

Q. You have said that your amount of sales on the Board as a hedge were just equal to—

A. No, I didn't; I will tell you what I said—

Q. (Continuing)—to the purchases you made in the country?

A. I said that we aimed to keep even, and buying that grain over night was just in the same proportions that we take and buy it on our card bids. Now in the morning, if we have sold part of that grain east or abroad, say, direct shipment, then the quantity which is sold on the Chicago Board of Trade is less whatever the amount of cash which we have sold to consumers or for exports is.

304 The Master: In other words, your cash sales and your sales on the Board in the shape of hedge would exactly equal your purchases?

A. About equal them. We aim to keep the two even each day; that is right. That is what I wanted to convey.

Mr. Jenks: (Q.) Well, I suppose it is as easy for you to answer my questions as to answer something else. You have said here that your hedging sales on the Board of Trade were equal, or about equal to your purchases of grain in the country. You have also said you bought in those hedges on the Board of Trade. You have said that the amount of grain that you delivered was a certain amount? A. Yes.

Q. Now, if these hedging deals, the purchase and sale for future delivery, were equal, and your deliveries on those contracts were very much less than the amount of the grain that you purchased in the country—? A. Yes.

Q. I would like to know how you settle those contracts for the excess, since you have also testified that those contracts on the Board for future delivery were settled by the actual delivery of the commodity.

A. I say yes, that those contracts may run along—I don't say they did. I said they might run along to delivery—the time of delivery.

Q. Well did they run along to the time of delivery?

A. I don't know without looking it up; I don't know.

Q. You don't undertake to swear that they did?

A. That they did what? That they did run along?

Q. Along to the time of delivery?

A. No, of course I could not, without looking it up; I could not answer.

Q. You don't undertake to swear that all of the commodities that you sold for future delivery and bought in for future delivery were actually delivered, do you?

A. That they were actually delivered?

Q. Yes, sir. A. Why, I can't tell without looking it up.

Q. No. Now, don't you know, as a matter fo fact that the most of those contracts were settled before maturity, and
305 settled by the payment of the difference between the purchase and sale price and settled through the Chicago Clearing House, on the Board of Trade clearing house?

A. Some of them may have been.

Q. Well, don't you know that they were?

A. No, I don't know that they all were. They may have been settled by actual delivery.

Q. They may have been, but I am asking you as a rule, which way was it settled?

A. I don't know, not having looked it up to see.

Q. You keep in your house settlement clerks?

A. We have clerks there.

Q. Do you have what you call settlement clerks?

A. Well, we don't call them settlement clerks in our business, because the man who attends to entering up of these sales on future delivery also does other things in the office. We don't call him a settlement clerk.

Q. Did your house ever ring up deals that are made on the Board of Trade? A. I suppose they do. I don't know it.

Q. You don't know? A. No, not of my own knowledge.

Q. That part of the business you don't attend to?

A. No, sir.

Q. Where you make a hedging sale on the Board of Trade against the actual commodity that you have purchased in the country, do you calculate to hold that commodity to deliver on this hedging sale on the Board of Trade?

A. Well, it is natural Mr. Jenks—I explained that, if you will just recall it.

Q. I don't want any explanation; answer the question yes or no. A. Put the question again, please.

(The question was read by the reporter.)

A. Oh, we may or may not.

Q. But I ask you if you calculate to hold it?

A. I cannot tell what we might do.

Q. As a matter of fact, you always do sell it where the best market is for it,—Isn't that correct?

A. Why, of course, it is.

306 Q. Without reference to your hedging sale?

A. With reference to the hedging sale, always.
Q. Without reference to—
A. With reference to it, always.
Q. (Continuing)—to your having sold it on the Board?
A. With reference to the price.
Q. And with reference to the fact that you have sold it?
A. Well, I have answered it.
Q. Which do you say?
A. I say, with reference to the hedging price.
Q. But without reference to the fact that you have sold it on the Board of Trade?
A. Certainly without reference to that.
Q. Who asked you to look up these figures?
A. To see how much we delivered?
Q. Who asked you to look up these figures?
A. What figures? You mean with reference to the quantity we delivered?
Q. Have you looked up any figures?
A. You know that I have. I stated that I had looked up to see how much stuff we had delivered.
Q. Who asked you to look them up?
A. Mr. Hill asked me to.
Q. What did he tell you?
A. He asked me if I would let him know how much stuff we had delivered on the Chicago Board of Trade from May 1st, 1901, to the 21st of April. Is that right, Mr. Hill?
Q. You needn't ask Mr. Hill about that.
A. To the 21st of April.
Q. What else did he tell you? A. Nothing.
Q. So you looked that up? A. Yes, sir.
Q. Did you look up anything else in the books?
A. No, sir; I was not asked to.
Q. Was any more grain delivered to you on the Board of Trade from May 1st, 1901, to April 21st, 1902, than you delivered out at the same place?
A. I don't know without looking that up, Mr. Jenks.
Q. What is your best impression about that?
A. Well, I don't know. My answer would be simply a guess; I don't know.
Q. Now, these deliveries that you made—whom did you deliver the wheat to? A. To the buyers.
307 Q. Where? A. On the Chicago Board of Trade.
Q. By notices?
A. By delivery notices and then the way that is done—
Q. I don't ask you how it is done. I ask you if the deliveries were made by notice?
A. No, the delivery is made by the warehouse receipt.
Q. And not by a notice?

A. A notice is sent out but the warehouse receipt is not sent with it; it is too valuable a property to send around tacked onto a notice.

Q. I didn't ask you about that, did I? Now, when a notice is sent out, you send it by Clerk, don't you?

A. Oh, yes; send it by clerk; that is clerical work.

Q. And that notice is passed around from one to another on the Board of Trade, isn't it? A. Yes.

Q. Does that notice ever come back to your clerk, the same notice?

A. Well that I don't know, without looking into it, I don't know.

Q. Now, since all this grain was delivered by warehouse receipt, as you say, were those warehouse receipts on your own elevators?

A. Some of them on our houses and the different regular elevators in Chicago, because sometimes we put stuff in other houses, but mostly our own regular houses that are regular on the Board of Trade, which we operate.

Q. Did you buy or sell any more grain for future delivery on the Chicago Board of Trade between May 1st, 1901, and April 21, 1902, than you had purchased in the country?

A. Did we buy it, did you say?

Q. Yes. A. Oh, I suppose we did, because we buy cash grain right on change there every day.

Mr. Jenks: Read that question of mine.

(The question was read by the reporter.)

A. By future delivery I thought you meant cash grain. Our business is cash business.

308 Q. Now, if you will pay attention to the question we will get along much better. A. All right.

Q. Just answer the question with reference to the oats.

A. Kindly read the question again.

(The question was read by the reporter.)

A. Well, that I don't know without looking it up.

Q. Well, what is your best impression about it?

A. I don't know; it will be simply a guess, as I said before.

Q. Did you deliver any more grain on the Chicago Board of Trade between those two dates than you have testified to?

A. Well, do you mean contract grain or cash grain? You know there's sometimes off grades of grain we deliver. We may have, for instance, we might have sold to you twenty-five cars, say, of No. 3 corn, or something of that sort, yes.

Mr. Jenks: I move to strike out the answer of the witness as not responsive to the question, and I will insist that he answer the question. Read the question to him.

(The question was read by the reporter.)

A. I don't know without looking it up.

Q. You purchased wheat in the country; do you know that a very large part of that wheat was not deliverable on Board of Trade contracts for futures; that it was not up to Board of Trade grade?

A. We had very little between those dates. had very little off grades of wheat this last year.

Q. Now, as to corn—don't you know that that wasn't up to the grade that was deliverable on Board of Trade contracts?

A. It is not, before it gets here, and is taken and cleaned up. Then it is put in shape for delivery.

Q. Does it increase in quantity by cleaning it up?

A. It does not increase in quantity; it increases in quality to take the dirt out of the grain.

Q. It decreases in quanitity?

A. It decreases in quantity, which is the shrinkage. There is always shrinkage in cleaning grain.

309 Q. Did you ever deliver any of that corn that you bought in the country on Board of Trade contracts for the sale of corn for future delivery? A. Yes, sir.

Q. How much? A. Without its being cleaned?

Q. How much corn that you bought in the country did you deliver on Board of Trade contracts for the sale of corn to be delivered in the future?

A. I think the quantity that we delivered would possibly be 3,495,000.

Q. Did you get all of that corn from the country?

A. It all comes from the country.

Q. Did you ship it all from the country?

A. Personally ship all we bought in the country—

Q. Did you buy it in the country and ship it?

A. We bought it in the country and brought it to Chicago.

Q. The whole of it? A. The whole of it.

Q. Did you deliver on your Board of Trade contracts for sale for future delivery of wheat, the wheat that you bought in the country and shipped to Chicago?

A. Yes, whenever it passed inspection. If it didn't, then we would have to take and clean it.

Q. Well, after cleaning it, did you then deliver it on those contracts? A. No, we would very often fall down on that.

Q. Then what did you do?

A. Then we had to take and market it.

Q. Market it how? A. Oh, to mills, and so on.

Q. Sell it where you could? A. Yes, wherever we could.

Q. But not on the Board of Trade. You didn't sell and deliver it on the Board of Trade?

A. We sold it on the Board of Trade, but then we would take and market it and buy in the future and get rid of it.

Q. Well, if you sold it on the Board of Trade, you didn't sell it at the pits, did you? A. If we sold the cash article?

Q. Yes.

A. If we sold the cash, there was no reason for going into the pit to sell a future.

310 Q. You did not sell it in the pits?

A. Yes; we sold some of it.

Q. What? A. Yes, we sold it in the pits originally.

Q. For cash?

A. No, not for cash, for future, and when the cash comes in, we sell the cash.

Q. You don't know what I am talking about.

A. Well, you will have to make yourself plain.

Q. I am talking about this corn that you shipped in the country that was not up to grade?

A. You didn't say corn; you said wheat yourself. You were talking about wheat. We will get back to corn.

Q. Well, we will take wheat then. A. All right.

Q. This wheat that was not up to grade and you sold on the Board of Trade— A. Yes.

Q. —you didn't sell that at the pits, did you? A. Yes, sir.

Q. Eh? A. Yes, sir; originally.

Q. For cash?

A. No, sir; not as cash. Originally a future was sold against it.

Q. Oh, that's not what I am talking about.

A. Well, will you please tell me what you are talking about?

Q. After you got the wheat into Chicago, and it was not up to grade— A. Yes.

Q. You sold it? A. Sold the cash when we could—

Q. Sold for cash. You didn't sell that at the pits, did you?

A. Our pit transactions are all made when this wheat is being accumulated in the country before it comes to Chicago.

Q. This wheat was not up to grade, and you could not deliver it on these contracts?

A. Some of it was not up to grade.

Q. And you say you sold it for cash?

A. Sold the cash wheat when it arrived.

Q. Very well now. Those cash sales you did not make at the pit? A. Certainly not.

Q. Where did you make them?

A. It was sold to mills, and so on around through the country.

Q. And it was not made on the Board of Trade there?

A. Yes, it was made on the Board of Trade.

311 Q. At what place?

A. At the pits originally, when it was sold, when it was bought in.

Q. That is not what I asked you. When you sold for cash, where was the sale made?

A. The sale was made to mills and the wheat was bought in in the pits.

Q. The sale was made to mills, but at what locality was the sale made? A. Right here in Chicago.

Mr. Robbins: To the mills?

A. To the mills. I can't get on to what you want, what you are at. You change your questions around so.

Mr. Jenks: (Q.) When you sold the wheat to the mills for cash, at what place was the sale made?

A. Now you are mixing up the word "cash". We speak of cash stuff, spot stuff, originally.

Q. Very well, we will call it spot stuff. A. All right.

Q. For spot stuff, where was the sale made?

A. It is made here in Chicago to the mills.

Q. Whereabouts? A. On the Board of Trade.

Q. At what locality on the Board of Trade?

A. I don't know where; in the cash crowd it might be or it might be on the floor.

Q. Well, it was not at the pit, where their selling pits are?

A. Right where the other stuff was sold, all this stuff has all been hedged against.

Q. Well, that's what I am getting at. A. All right.

Q. Now, the oats that you got in the country were they all up to grade, deliverable on Board of Trade contracts?

A. All the oats we bought?

Q. Yes.

A. No; they are handled the same way as the corn and wheat.

Q. Where the oats were not deliverable on the contracts, what did you do with them?

A. The same way; we handled them the same way as the corn and wheat.

Q. The rye, was that all up to grade?

A. Well, I guess pretty nearly all of it was; I don't know, it was such a small amount.

312 Q. You don't know anything about it, do you?

A. I don't remember about the rye, because it was such a small quantity in the business.

Q. Will you tell me, Mr. Martin, what proportion of the sales by way of hedges, and the buying in of hedging sales, resulted in actual delivery of the commodities, and what proportion resulted in ringing up the deals, and settling through the clearing house?

A. I don't know without looking that up, Mr. Jenks.
Q. Can't you make a good guess at it?
A. No, I can't; it is a hard matter to do that.

By Mr. Robbins:
Q. Is Counselman & Company a firm? A. Yes, sir.
Q. Are you a member of the firm?
A. No, I have an interest there.
Q. Now, what are your duties generally?

Objected to. Question withdrawn.

Q. Well, what do you do in the business?
A. Why, my business is the general oversight of our entire business.

All signatures waived by consent of counsel.

Testimony of complainant before said Master, here closed.

MAX H. WHITNEY,
Special Master.

Chicago, Ill., April 30, 1902.

313 In the Circuit Court of the United States, for the Northern District of Ohio, Western Division.

Board of Trade of the City of Chicago, Complainant,
vs.
The O'Dell Commission Company, W. J. O'Dell, George H. Stapely, John Maxwell, The Western Union Telegraph Company, and The Gold and Stock Telegraph Company, Defendants.

Be it Remembered, that heretofore, to wit: upon the 10th day of November, A. D. 1901, the above entitled cause came on to be heard, before Max H. Whitney, Esq., Special Master in Chancery of said Court, pursuant to an order of reference heretofore entered in said cause.

Henry S. Robbins, Esq., appeared as solicitor on behalf of the complainant.
Messrs. A. B. Jenks and Thomas F. Shay appeared as solicitors on behalf of the defendants.

Whereupon the complainant, to maintain the allegations in its bill of complaint contained, by its counsel, introduced the following evidence, to wit:

Frederick E. Crawford, produced as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Robbins:

Q. What is your name? A. Frederick E. Crawford.

Q. Mr. Crawford, what is your business?

314 A. I am in the telegraph business.

Q. And connected with what companies?

A. I am Superintendent of the Chicago & Milwaukee Telegraph Company, and Superintendent of the Cleveland Telegraph Company.

Q. And how long have you occupied those positions?

A. I have been with the Chicago & Milwaukee about fifteen years; with the Cleveland about fifteen months.

Q. Does your business take you on to the floor of the Board of Trade? A. Yes, sir; constantly.

Q. How long have you been around the Board of Trade, the exchange floor? A. Twenty years.

Q. Will you describe the manner in which the quotations of the Chicago Board of Trade were at the time of the filing of this bill and prior thereto, and now are, collected?

Mr. Jenks: I object to that because it is the word "now".

The Master: I didn't catch your objection.

Mr. Jenks: Because it includes in the question "and are now collected".

The Master: I think you had better divide that,—at and prior to the time—and then you can see—

Mr. Robbins: Well, strike out "now".

A. What is the date of the bill, Mr. Robbins?

Q. About the 15th of June, I think.

A. Some time this year, is it?

Q. Yes, since the first of June—it has been filed since the first of June, this year.

A. There is a reporter placed in each one of the trading pits, namely, the wheat pit, the corn pit and provision pit, so-called, and the oats pit, and one general reporter who watches the barley, rye and flax. These reporters take a note of the

315 transactions which affect the price either up or down, and record the price; hand the slip of that record to a messenger boy; and these slips are taken to a telegraph operator—

Q. Where is he located?

A. —who is located right on the edge of the wheat pit. The wheat quotations are handed, in fact, to the operator, without the services of a messenger being required, because the wheat

reporter sits practically within the same enclosure as the telegraph operator. The other quotations are brought to this booth and handed to the telegraph operator. Do you want to know what happens further than that?

Q. Yes.

A. They are by him transmitted by telegraph over a Morse circuit, which goes to the various telegraph companies who have been appointed to receive the quotations.

Q. Well, name the companies.

A. The Western Union Telegraph Company, the Postal Telegraph Cable Company, the Cleveland Telegraph Company, the Chicago & Milwaukee Telegraph Company.

Q. You mean to their offices in the City of Chicago?

A. To their main offices in the City of Chicago, to their switch-boards. The same quotation, without any break whatever, is automatically repeated to any point where those companies care to deliver the quotation continuously, outside of the city of Chicago as well as inside the city of Chicago. The quotations for the City of Chicago are sent out for the most part by tickers, the operation being by a ticker transmitter operator, who is also a telegraph operator, and instead of transcribing the quotations as he ordinarily would on a piece of paper with a lead pencil or by the use of a typewriter, he has the key-
board of the ticker transmitter in front of him, which is
316 not dissimilar to the key-board of a typewriter, and he sends them out continuously, keeping right up with the markets on the various tickers.

Q. Well, now, describe the ticker, or how the quotations are carried from the transmitter to the customers.

A. A ticker might be described as—well, it is really an electrical transmission going simultaneously to all tickers within the circuit, and printing on the slips of paper a record of the transactions, as far as they relate to prices, made on the Board of Trade, at any point either near or distant within reasonable limits; that is to say, if there were a thousand tickers in operation they would all be worked from a single transmitter, and each ticker would print on a slip of paper the letters and figures which were sent out on the particular transmitter, so-called.

Q. The ticker prints automatically on tape, does it?

A. The ticker prints automatically on tape.

Q. Automatically on rolling tape? A. Yes, sir.

Q. Now, what time in the morning does this collection of quotations begin? A. At half past nine o'clock.

Q. And when does it end?

A. At a quarter past one o'clock in the afternoon.

Q. Now, after the opening quotation is noted and transmitted in the manner that you have described what is next done, what is the next notation that is made?

A. The quotations follow up in the order in which they are recorded and are given to the operator.

Q. Well, suppose the market remains stationary—

A. So long as the price is not changed nothing is done.

Q. And as soon as there is a variation or fluctuation of the price— A. Yes.

Q. —one way or the other, that annotation is made

317 and transmitted?

A. Yes, that is what I mean. These slips do not record the volume of transactions, but record all changes in price.

Q. And that is true of the whole market time, is it?

A. Yes, sir.

Q. That every fluctuation that occurs in the course of business from the opening to the close is noted and sent to the telegraph operator, and by him transmitted in the way you have described? A. Yes, sir; that is correct.

Q. What interval of time would intervene between the time of a transaction in the pit and the time it was received by a person in Chicago desiring the quotation, desiring and receiving quotations?

A. Ordinarily not more than five to ten seconds, I should think. At times when all of the pits are active there may be a delay of twenty seconds in some particular quotation. Ordinarily the wheat pit—the wheat quotations ordinarily would be received within a second or two from the time the price fluctuates, because they don't have to wait for a messenger boy to carry it to the pit. The others would be a little slower.

Q. Well, what interval of time would intervene between the making of a transaction in one of the pits and the receipt of the quotation in other cities like Cincinnati by customers of the telegraph company?

A. No more time than in the City of Chicago. The transmission is continuous and instantaneous to Cincinnati, just the same as it would be to a Chicago point.

Q. Are these quotations transmitted from the floor of the exchange or by the Board of Trade to any other telegraph companies than the four you have named? A. No, sir.

Q. And that was true at the time of the filing of this bill, was it? A. Yes, sir.

318 Q. And before? A. Yes, sir.

Q. What is the yearly cost of collecting and transmitting these quotations in the manner you have stated—I don't mean the cost, if any, that occurs after they reach the telegraph companies, but up to that point—the collection on the floor and the transmission by the telegraph operator from the floor?

Mr. Jenks: I will object to that, unless you limit to a previous time to the filing of the bill. Your question is "What is".

Mr. Robbins: Well, limit your answer to the cost at the time of and prior to the filing of the bill in this case.

A. About $600.00 a month.
Q. What does that consist in?
A. The salaries to the reporters as I named them, messenger boys and telegraph operators.
Q. What do people in the city of Chicago pay for these continuous quotations?

The question was objected to by counsel for defendants upon the grounds last above stated.

Q. Or what did they pay at the time of the filing of this bill?
A. Four dollars a week per ticker. Some of them have more than one ticker.
Q. Has the Cleveland Telegraph Company entered into a contract with the Board of Trade for the receipt of these quotations?

Mr. Jenks: I object.
The Master: On what ground?
Mr. Jenks: That is a conclusion of the witness as to whether or not they have entered into a contract. If the matter is in writing that can be produced, and it shows what it is.
319 The Master: You might call it a written agreement.

Mr. Robbins: (Q.) Well, a written agreement?
A. Yes, sir.
Q. Is this the agreement signed by the Board of Trade and the Cleveland Telegraph Company, under which the quotations are being received by the Cleveland Telegraph Company (handing paper to witness)? A. Yes sir.

Counsel for complainant offered said document in evidence and asked leave to withdraw same and substitute a copy thereof.

Mr. Jenks: I object to the introduction of the agreement, upon the ground that the agreement itself is an illegal one and, therefore, not binding upon anybody, and not good as an agreement.
The Master: Objection overruled.

Said document was admitted in evidence, marked as Complainant's Exhibit 1 of this date, and a copy thereof is attached hereto and made a part hereof.

320 This Agreement, Made this 31st day of July, 1900, between the Board of Trade of the City of Chicago, a corporation organized under the laws of Illinois, and the Cleve

land Telegraph Company, a corporation organized under the laws of West Virginia,

Witnesseth: That

Whereas, said telegraph company desires to receive the quotations of the prices made in transactions between members of said Board of Trade in its Exchange Hall for the purpose of selling same to [iys] customers, and thereby realizing a profit to itself, and

Whereas, the indiscriminate sale or distribution [od] said quotations is apt to and in many cases does result in their use in so-called "bucket shops" as a basis of illegal bets or gambling upon the fluctuations of said quotations and such use of said quotations and the methods usually employed in and about the so-called bucket shops are calculated to bring discredit upon said Board of Trade in the minds of many people, and to thus cause pecuniary loss and damage to said Board of Trade and its members, by reason whereof said Board of Trade and its members spend large sums of money annually, and desire to spend more in efforts to suppress bucket shops, and

Whereas, said Board of Trade will be required to expend considerable sums of money in collecting said quotations upon the floor of said exchange and transmitting them to said telegraph company, and also expends large sums of money in acquiring quotations of the Liverpool Grain market and other information concerning the daily visible supply of grains at primal points in the United States, and other trade conditions and in maintaining an Exchange Hall where such quotations are created,

Now Therefore, it is agreed by the parties hereto as follows:

I. Said Board of Trade undertakes and agrees that
321 said telegraph company shall receive for the period of one year from the date hereof, complete and continuous quotations of prices upon such Exchange, as well as such other market and statistical news as said Board of Trade shall deem it advisable to furnish to said telegraph company in connection with such quotations—such quotations to be received by said telegraph company at its office or offices in the city of Chicago, over a wire or wires to be furnished by said telegraph company connecting said office or offices with the wire or wires in said exchange building which run to and are connected with the transmitting instrument upon the floor of the exchange, such transmitting instrument to be the only one by which such quotations are to be transmitted from said Exchange Hall. Said market quotations to be collected in the different parts

of said Exchange Hall and be brought to the operator of said transmitting instrument with as much speed and efficiency as they were prior to June 22nd, 1900, by the Western Union Telegraph Company, and a sufficient number of persons shall be employed for this purpose to enable the same volume and number of quotations to be furnished to said telegraph company as were prior to said date by said Western Union Telegraph Company furnished to other telegraph companies or its own customers—but nothing herein contained shall entitled said telegraph company to admittance to the floor of such exchange for the purpose of receiving or collecting such quotations or news.

II. Said telegraph company agrees that it will not knowingly furnish or sell directly or indirectly said quotations or other news to any person, firm or corporation conducting a bucket shop, or other similar place, where such quotations are used as a basis for bets or other illegal contracts based upon the fluctuations of the price of commodities dealt in on said Board of Trade—nor will it knowingly continue to
322 furnish such quotations to any person or corporation who shall re-transmit or furnish the same to any person, firm or corporation conducting such bucket shop or other place, but said telegraph company shall be liable for costs in suits brought to enforce this clause only when it shall actively defend such suit.

III. Said telegraph company agrees that it will not directly or indirectly furnish said quotations to any other telegraph company or other person, firm or corporation engaged in the business of distributing market news by telegraph or telephone, the intent hereof being that every such telegraph company or disseminator of news shall come into direct contract relation with, and accountability to said Board of Trade as a condition to its being furnished said quotations and news.

IV. It is further agreed by said Board of Trade that it will cause to be kept quotation records showing the prices at which all commodities dealt in on said Board of Trade are bought and sold, and showing the fluctuations throughout the day with the specific time of said fluctuations in the same manner as said quotation records have been heretofore kept by said telegraph company, and that said telegraph company may at all times have access to said quotation records.

V. Said telegraph company agrees that it will furnish to said Board of Trade every sixty (60) days after the date hereof, a full and complete list of the names and locations of all persons, firms or corporations to whom it is furnishing or has furnished during the preceding sixty days, said complete and

continuous quotations of said Board of Trade; and that said telegraph company will reimburse said Board of Trade for all expenses (including reasonable attorney's fees) it may incur in compelling a compliance with this provision.

323 VI. The said telegraph company hereby agrees to pay said Board of Trade for said quotations and other market news, as follows:

1. For every person, firm or corporation furnished by said telegraph company with said complete and continuous quotations in the city of Chicago, the sum of two dollars for each week of such service.

2. For every person, firm or corporation furnished by said telegraph company with said complete and continuous quotations outside of the city of Chicago, the sum of two dollars per month for each month (and fractional part thereof) of such service.

Every person receiving one quotation for any given commodity for delivery in a given month more frequently than once in every fifteen minutes, shall be deemed a person receiving continuous quotations hereunder.

In case any person, firm or corporation receiving such continuous quotations shall have a private telegraph wire or wires running into his, its or their office, then each office in each place connected with each said wire, shall be counted an additional person hereunder.

3. For every person, firm or corporation furnished by said telegraph company with quotations which are not complete and continuous as above defined, for each month (or fractional part thereof) of such service, the sum of seventy-five cents per month.

VII. Said telegraph company agrees that it will on or before the 10th day of each month, render to said Board of Trade an account showing the number of persons furnished by it with continuous quotations as above defined, and also with non continuous quotations for the preceding month, and shall accompany such statement with a remittance for the amount
324 due said Board of Trade hereunder. In case of its failure to do so, said telegraph company agrees to reimburse said Board of Trade for all costs and expenses (including reasonable attorney's fees) incurred by said Board of Trade in securing said account or payment or both.

VIII. Said telegraph company agrees that it will furnish said continuous quotations only to such of its customers as

shall sign a written agreement that said quotations are to be used only for the private use of said customer in his or its business and that he or it will not sell, communicate or otherwise give said quotations to any news distributing or telegraph company, nor allow any person or corporation whatsoever to directly or indirectly take said quotation from said customer's office, and also providing for the right of said telegraph company to terminate said contract if said customer shall violate the foregoing provision of said contract.

In Witness Whereof, the parties of the first and second parts have hereunto caused their signatures and seals to be hereto affixed by their proper officers the date and year first above written.

(Signed) BOARD OF TRADE OF THE CITY OF CHICAGO,
[Seal] By W. S. Warren, Prest.
Attest: GEORGE F. STONE, Secretary.

[Seal] THE CLEVELAND TELEGRAPH COMPANY,
By Geo. B. Solders, Prest.
Allen A. Odell, Sec.

325 Mr. Robbins: (Q.) What is the document I now hand you? (Handing paper to witness.)

A. This is an agreement between the Board of Trade of the City of Chicago and the Milwaukee Telegraph Company—The Chicago & Milwaukee Telegraph Company.

Q. Is that the agreement under which the Milwaukee Telegraph Company is receiving from the Chicago Board of Trade its quotations? A. Yes, sir.

Counsel for complainant offered said document in evidence, and asked leave to withdraw same and substitute a copy thereof.

Mr. Jenks: I object to the introduction of that paper, for the reason that the same is apparently an agreement between two corporations upon a subject that neither of them had any right or authority under the law to contract about; that the terms of the agreement established an illegal contract, and contrary to law and void as being against public policy; and it is ultra vires as to the Board of Trade of the City of Chicago, and the same as to the telegraph company; and I make the same objection to the introduction of the former paper which was offered.

The Master: Both objections are overruled and the papers admitted.

Said document was admitted in evidence, marked as complainant's Exhibit 2 of this date, and a copy thereof is attached hereto and made a part hereof.

326 EXHIBIT "B."

This Agreement, Made this 31st day of July, 1900, between the Board of Trade of the City of Chicago, a corporation organized under the laws of Illinois, and the Chicago & Milwaukee Telegraph Company, a corporation organized under the laws of Wisconsin,

Witnesseth: That

Whereas, said telegraph company desires to receive the quotations of the prices made in transactions between members of said Board of Trade in its Exchange Hall for the purpose of selling same to its customers and thereby realizing a profit to itself, and

Whereas, the indiscriminate sale or distribution of said quotations is apt to and in many cases does result in their use in so-called bucket shops as a basis of illegal bets or gambling upon the fluctuations of said quotations, and such use of said quotations and the methods usually employed in and about the so-called bucket shops are calculated to bring discredit upon said Board of Trade in the minds of many people and to thus cause pecuniary loss and damage to said Board of Trade and its members, by reason whereof, said Board of Trade and its members spend large sums of money annually, and desire to spend more in efforts to suppress bucket shops, and

Whereas, said Board of Trade will be required to expend considerable sums of money in collecting said quotations upon the floor of said exchange and transmitting them to said telegraph company, and also expends large sums of money in acquiring quotations of the Liverpool Grain market and other information concerning the daily visible supply of grains at primal points in the United States, and other trade conditions and in maintaining [and] exchange hall where such quotations are created.

Now Therefore it is agreed by the parties hereto as follows:

327 I. Said Board of Trade undertakes and agrees that said telegraph company shall receive for the period of one year from the date hereof, complete and continuous quotations of prices upon such exchange, as well as such other market and statistical news as said Board of Trade shall deem it advisable to furnish to said telegraph company in connection with such quotations—such quotations to be received by said

telegraph company at its office or offices in the city of Chicago, over a wire or wires to be furnished by said telegraph company connecting said office or offices with the wire or wires in said exchange building which run to and are connected with the transmitting instrument upon the floor of the exchange, such transmitting instrument to be the only one by which such quotations are to be transmitted from said Exchange Hall, and said market quotations are to be collected in the different parts of said exchange hall and be brought to the operator of said transmitting instrument with as much speed and efficiency as they were prior to June 22nd, 1900, by the Western Union Telegraph Company, and a sufficient number of persons shall be employed for this purpose to enable the same volume and number of quotations to be furnished to said telegraph company as were prior to said date by said Western Union Telegraph Company furnished to other telegraph companies or its own customers—but nothing herein contained shall entitle said telegraph company to admittance to the floor of such exchange for the purpose of receiving or collecting such quotations or news.

II. Said telegraph company agrees that it will not knowingly furnish or sell directly or indirectly said quotations or other news to any person, firm or corporation conducting a bucket shop or other similar place where such quotations are used as a basis for bets or other illegal contracts based upon the fluctuations of the prices of commodities dealt in on said Board of Trade—nor will it knowingly continue to furnish same to any person, firm or corporation who shall retransmit or furnish the same to any person, firm or corporation conducting such bucket shop or other place, but said telegraph company shall be liable for costs in suits brought to enforce this clause only when it shall actively defend such suit.

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III. Said telegraph company agrees that it will not directly or indirectly furnish said quotations to any other telegraph company or other person, firm or corporation engaged in the business of distributing market news by telegraph or telephone, the intent hereof being that every such telegraph company or other disseminator of news shall come into direct contract relation with, and accountability to said Board of Trade as a condition to its being furnished said quotations and news.

IV. It is further agreed by the said Board of Trade that it will cause to be kept quotation records showing the prices at which all commodities dealt in on said Board of Trade are bought and sold, and showing the fluctuations throughout the day with the specific time of said fluctuations in the same manner as said quotation records have been heretofore kept by said

telegraph company, and that said telegraph company may at all times have access to said quotation records.

V. Said telegraph company agrees that it will furnish to said Board of Trade every sixty (60) days after the date hereof, a full and complete list of the names and locations of all person, firms or corporations to whom it is furnishing or has furnished during the preceding sixty days, said complete and continuous quotations of said Board of Trade; and that said telegraph company will reimburse said Board of Trade for all expense (including reasonable attorney's fees) it may incur in compelling a compliance with this provision.

VI. The said telegraph company hereby agrees to pay said Board of Trade for said quotations and other market news, as follows:

329 1. For every person, firm or corporation furnished by said telegraph company with said complete and continuous quotations outside of the city of Chicago, the sum of two dollars per month for each month (and fractional part thereof) of such service.

Every person receiving one quotation for any given commodity for delivery in a given month more frequently than once in every fifteen minutes, shall be deemed a person receiving continuous quotations hereunder.

In case any person, firm or corporation receiving such continuous quotations shall have a private telegraph wire or wires running into his, their or its office, then each office in each place connected with each said wire, shall be counted an additional person hereunder.

2. For every person, firm or corporation furnished by said telegraph company with quotations which are not complete and continuous as above defined, for each month (or fractional part thereof) of such service, the sum of seventy-five cents per month.

VII. Said telegraph company agrees that it will on or before the 10th day of each month, render to said Board of Trade an account showing the number of persons furnished by it with continuous quotations as above defined, and also with non-continuous quotations, for the preceding month, and shall accompany such statement with a remittance for the amount due said Board of Trade hereunder. In case of its failure to do so, said telegraph company agrees to reimburse said Board of Trade for all costs and expenses (including reasonable attorney's fees) incurred by said Board of Trade in securing said account or payment or both.

VIII. Said telegraph company agrees that it will furnish said continuous quotations only to such of its customers as shall sign a written agreement that said quotations are to be used

only for the private use of said customer in his or its business and that he or it will not sell, communicate or otherwise
330 give said quotations to any news distributing or telegraph company, nor allow any person or corporation whatsoever directly or indirectly take said quotations from said customer's office, and also providing for the right of said telegraph company to terminate said contract if said customer shall violate the foregoing provision of said contract.

IX. Said telegraph company further agrees that it will not furnish or sell said continuous quotations to any person doing business within the city of Chicago or for use within said city, and that said Board of Trade may at any time terminate this contract upon giving said telegraph company thirty (30) days' notice of its intention to do so.

In Witness Whereof the parties of the first and second parts have hereunto caused their signatures and seals to be hereto affixed by their proper officers the date and year first above written.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By W. S. Warren, Prest.
CHICAGO & MILWAUKEE TELEGRAPH COMPANY,
(Seal) By F. E. Crawford, Secretary & Genl. Manager.
(Seal). Attest
George F. Stone.

331 Mr. Robbins: (Q) How long has the Cleveland Telegraph Company been receiving quotations of theChicago Board of Trade under this agreement?

A. I think it is since the 1st day of August, 1900. I am not absolutely certain that that is the date.

Q. How long has the Milwaukee Telegraph Company been receiving these quotations under this contract with it?

A. Since the first day of August, 1900.

Q. What territory does the Milwaukee Telegraph Company cover?

A. The City of Milwaukee only as regards the dissemination of quotations.

Q. What territory does the Cleveland Telegraph Company distribute quotations in? A. The City of Chicago only.

Q. Has the Cleveland Telegraph Company ever furnished quotations these quotations to the O'Dell Commission Company, W. J. O'Dell, George H. Stapely or John Maxwell of the City of Cincinnati?

Mr. Jenks: I object to the question as a leading one.
The Master: The objection overruled.

A. Well, I know that they never have furnished quotations to the parties named.

Mr. Robbins: (Q) Has the Milwaukee Telegraph Company ever furnished these quotations to any of those parties?
A. No, sir.

Mr. Jenks: I object to that question for the same reason.
The Master: Overruled.

Mr. Robbins: (Q) What if anything, has the Cleveland Telegraph Company done under the eighth clause of this agreement with the Board of Trade?

Mr. Jenks: I object to that question as incompetent, because it calls for the conclusion of the witness as to whether
332 the company has done something under a certain clause.
The Master: Yes, I think that implies a conclusion on the part of the witness.

Mr. Robbins: (Q) Has the Cleveland Telegraph Company taken from its customers any written agreement—
A. Yes, sir

Mr. Jenks: That is a leading question and objected to.
The Master: He has not finished his question yet, as I understood it.
Mr. Jenks: Well, it was answered. That is why I object to the answer.
Mr. Robbins: Well, I will stop there. That is enough for the present.

The question was objected to by counsel for defendants as leading. The objection was overruled by the Master.

Q. Answer. A. Yes, sir.
Q. Have you a form of the written agreement that you have taken—written agreements that you have taken from your customers, to whom you have been furnishing these Board of Trade quotations? A. I have; yes sir.
Q. Will you produce it?

(The witness here produced and submitted a document to counsel for complainant.)

Mr. Jenks: How is that material in this case? I will object to it.
The Master: I don't know yet.
Mr. Jenks: I object to it as not material at all.

Mr. Robbins: (Q) What is the paper I now have in my hands?

A. It is a form of agreement used by the Cleveland Telegraph Company in entering into relations with its cus-
the
333 tomers relative to furnishing of Chicago Board of Trade quotations prior to about the 1st of April, 1901.

Q. How many of the customers for quotations of the Cleveland Telegraph Company have signed a contract in the form of the paper you now hand me?

The question was objected to by counsel for defendant, as immaterial. The objection was overruled by the Master.

Mr. Robbins: I mean by that, what proportion of the customers sign such contracts?

The question was objected to by counsel for defendants as immaterial. The objection was overruled by the Master.

A. Each customer signed such a contract who had the quotations at or prior to the date given, April 1st, 1901.

Q. Were quotations furnished to any person by the Cleveland Telegraph Company who did not sign an agreement in this form? A. No.

The question was objected to by counsel for defendants as leading. The objection was overruled by the Master.

Q. Answer. A. No, sir.

Mr. Robbins: I offer that in evidence.

Mr. Jenks: I object to that as incompetent and not relative to the matters at issue in this case.

The Master: Overruled.

Said document was admitted in evidence, marked as complainant's Exhibit 3 of this date, and is attached hereto and made a part hereof.

Mr. Robbins: (Q) What was the occasion of the change in the form of this contract, the customer's contract?

334 The question was objected to by counsel for defendants on the grounds last above stated. The objection was overruled by the Master.

A. The Board of Trade entered into an agreement, as I understood it, with The Western Union and Postal Telegraph Cable Companies about April 1st, 1901, and in order to avoid any possible controversy between the Telegraph Companies, the Cleveland and Milwaukee Companies consented to conform to the agreement as having been selected, I believe, by the Telegraph Companies and the Board of Trade for use between those companies and their customers. It is practically the same contract which was—

Mr. Jenks: Wait a moment. Read the question.
(The question was read by the reporter.)

Mr. Jenks: I object to the question for the further reason that it is incompetent in this case to prove why any contract was changed. There is nothing set up in the pleadings which makes an issue upon the change of a contract.
The Master: Overruled.
Mr. Jenks: And I move to strike out the answer.
The Master: Overruled.

Mr. Robbins: (Q) What is the document I now hand you? (Handing paper to witness).
A. It is the form of agreement used by the Cleveland Telegraph Company at the present time and which has been used since about April, 1901.
Mr. Robbins: I offer that in evidence.

Mr. Jenks: I object to that for the same reason as the other.
The Master: Overruled.

335 Said document was admitted in evidence, marked as Complainant's Exhibit 4 of this date, and is attached hereto and made a part hereof.

Mr. Robbins: (Q) Were there any customers receiving these quotations from the Cleveland Telegraph Company at and prior to the time of the filing of this bill, who had not first signed one or the other of these two forms of contract?

The question was objected to by counsel for defendants as immaterial and incompetent. The objection was overruled by the Master.

A. No, sir.
Q. Are there now any customers of the Cleveland Telegraph Company receiving these qnotations from it who have not signed one or the other of these two forms of contract?

Mr. Jenks: I object to the question for the same reason as to the other.

A. No, sir.
The Master: If that is the only objection I overruled the objection.
Mr. Jenks: That is included because it is incompetent. He has got that word in the question, or I had that word in the objection.
The Master: Overruled. It may stand.

Mr. Robbins: (Q) How many of these contracts of the first forms are now outstanding?

Mr. Jenks: I object to the question as immaterial.
The Master: I don't see how it makes any difference, if they all are—
Mr. Robbins: Only to show that there is a practical substitution of the new form for the old.
336 The Master: If you confine that to the date of the time the bill was filed you may.

Mr. Robbins: (Q) Can you state how many of the old forms of the contracts had been exchanged for the new form of contracts with the customers at the time this bill was filed?

The question was objected to by counsel for defendants as immaterial. The objection was overruled by the Master.

A. The date is July—
Q. June 15th, I think, about June 15th.
A. I can't answer that Mr. Robbins. I know that a large portion of them—

Mr. Jenks: Don't undertake to answer, unless you know.

A. I know that a large portion of them had been changed at that time.

Mr. Jenks: I move to strike out the answer as not responsive to the question, and the whole being absolutely immaterial to the issues in this case, and the matters and transactions being between parties other and different from those described in the pleadings.
The Master: Overruled.

Mr. Robbins: (Q) Now, I will ask you at the present time how many of the customers of the Cleveland Telegraph Company have still the old—the first form of contract?

The question was objected to by counsel for defendants as immaterial, and as relating to matters occurring since or existing since the filing of the bill in this case. The objection was sustained by the Master.

Q. Has the Milwaukee Telegraph Company taken from its customers receiving quotations from it any contracts?

The question was objected to by the counsel for defend-
337 ants as immaterial. The objection was overruled by the Master.

A. Yes, sir.
Q. In what form?
A. In the form of the second of the two there, the later form.
Q. In the form of Exhibit 4? A. Yes, sir.

Q. At and prior to the time of the filing of this bill, was the Milwaukee Telegraph Company furnishing these quotations to any person, firm or corporation, who or which had not signed a contract in the form of Exhibit 4?

The question was objected to by counsel for defendants as leading and incompetent. The objection was overruled by the Master.

A. Well, Exhibit 4 is this one (referring to paper). Yes, sir, we had used that—we had used Exhibit—whatever it is—prior to the time that we used this one.

Q. You mean— A. I mean Exhibit 3.

Q. You mean Exhibit 3? A. Yes, sir.

Q. And you first commenced with Exhibit 3? A. Yes.

Q. And when did you change to Exhibit 4?

Counsel for defendants objected to the question on the grounds last above stated. The objection was overruled by the Master.

A. About the first of April last.

Q. Now, prior to the time of the filing of the bill in this case did the Milwaukee Telegraph Company furnish these quotations to any person, firm or corporation, who or which had not first signed a contract in one or the other of these forms?

The question was objected to by counsel for defendants as leading, incompetent and immaterial. The objection was overruled by the Master.

338 A. No, sir.

Q. Has the Milwaukee Telegraph Company, since the filing of this bill, furnished these quotations to any person, firm or corporation who or which has not signed a contract in the form of Exhibit 4?

Mr. Jenks: Same objection, and the further one that it relates to matters occurring since the filing of the bill.

The Master: Overruled.

A. No sir.

The further hearing of said cause was adjourned to November 20, 1901, at 10:30 o'clock A. M.

339 November 20, 1901;
10:30 o'clock A. M.

Parties met pursuant to adjournment.

Present: Counsel for respective parties.

Frederick E. Crawford, having resumed the stand, was further interrogated by Mr. Robbins, and testified as follows:

Q. Mr. Crawford, you spoke of the time during which the quotations are collected. What is the time on Saturdays?

A. The time on Saturdays is from 9:30 in the morning until twelve noon. That did not occur to me when you spoke of it before. On other days the time is from 9:30 in the morning until 1:15 P. M.

Q. Are the Cleveland Telegraph Company and the Milwaukee Telegraph Company still receiving these quotations under the contracts marked Exhibits 1 and 2? A. Yes, sir.

Cross-Examination

By Mr. Jenks:

Q. Mr. Crawford, how long have you been connected with the Board of Trade of the City of Chicago?

A. My business has been on the Board of Trade for abou 20 years. My duties have taken me on the floor of the exchange daily practically all of that time.

Q. When you first commenced on the Board of Trade 20 years ago, what had you to do there?

A. I was employed by the Western Union Telegraph Company as telegraph operator in the office on the floor of the Board. That was my first connection with that company.

Q. You are then a telegraph operator? A. Yes, sir.

Q. And how long did you continue to act in that capacity, on the floor of the exchange room of the Board of Trade for the Western Union Telegraph Company?

340 A. About three months, if I remember correctly; not longer than that.

Q. Then what did you do, and for whom did you do it, on that floor?

A. I went to work as a telegraph operator for the Chicago & Milwaukee Telegraph Company.

Q. And how long did you act in that capacity for it?

A. As a telegraph operator about four years, I think; as their Chicago Manager about two years.

Q. Which brought it down until what time?

A. About 1887, I think.

Q. What was the difference in your duties, between what you were to do as telegraph operator and what you were to do as Manager for the Milwaukee Company?

A. As an operator I sat at the key constantly transmitting messages, and as manager of the company, manager of the Chicago office, I had general charge of the operators and the business of the office.

Q. Of that particular company?

A. Of that particular company, yes, sir, at that time.

Q. After 1887, what did you do there?

A. I was appointed Superintendent of the Chicago & Milwaukee Telegraph Company in 1887.

Q. How long did you act as Superintendent for that company? A. I am superintendent of the company yet.

Q. What was the difference in your duties, those performed by you as superintendent and those performed as manager?

A. As superintendent I had charge not only of the Chicago office, but of the Milwaukee office and all of the business of the company.

341 Q. But you had no office as superintendent except on the floor of the exchange room on the Board of Trade—is that correct? A. I do not understand. How do you mean?

Q. (Read by the reporter.)

A. We always have offices outside—do you mean a telegraph office or business office?

Q. I am speaking now of your office as superintendent, whether you yourself had any office except on the floor of the exchange room of the Board of Trade?

A. If you mean by an office a room, yes, I had. I had an office.

Q. Where? A. In the Board of Trade building.

Q. Where did you spend your time during business hours of the Board of Trade, on its floor—

A. During exchange hours almost constantly on the floor of the Board.

Q. Had you any other business to attend to than as telegraph operator while you acted as such, and as superintendent for these telegraph compaies, while you so acted?

A. No, sir.

Q. You say you are still superintendent of the Chicago & Milwaukee Telegraph Company? A. Yes, sir.

Q. You have been such ever since 1887? A. Yes, sir.

Q. Have you in the meantime had any other business?

A. Yes, sir; that is, in connection with other companies.

Q. What?

A. I have been connected with the company called the Type Telegraph Company. At one time I was connected with a company called the Board of Trade Telegraph Company, and I am now connected with the Cleveland Telegraph Company, but my main business all the time has been, in fact, all of my business has been with companies operating in and from the Board of Trade building, from the exchange hall.

342 Q. How were you connected with the Type Telegraph Company?

A. I had charge of the ticker service which they inaugurated.

Q. And in such charge where was your place and where were your duties performed?

A. In and about the exchange hall, the hall in the Board of Trade building.

Q. When did you commence with it, and how long did you continue there?

A. From some time in 1898, if I remember, until some time in 1900.

Q. Then did the Type Telegraph Company go out of business? A. In Chicago, yes, sir.

Q. Did it have business anywhere else?

A. I think it had; yes, sir.

Q. Where?

A. I think it has business in New York. I think the company is in existence.

Q. Do you mean to say that you don't know?

A. I don't know particularly in regard to them.

Q. Did the Type Telegraph Company have any business while you were connected with it, except such business as you managed? A. Not in the City of Chicago.

Q. Did it have lines extending outside the City of Chicago while you were manager?

A. I think I can correct your impression. It is not a telegraph company operating lines. It is a ticker company, manufacturing tickers.

Q. What is the name of the company?

A. Type Telegraph Company.

Q. And it manufactures tickers? A. Yes, sir.

Q. It does not operate them at all?

A. Yes, it does perhaps, and perhaps it does not. I don't know. It has operated them.

343 Q. Did it operate them while you were manager?

A. In Chicago; yes, sir.

Q. Did it have wires? A. In Chicago; yes, sir.

Q. Where did those wires run from the tickers?

A. The main office was in the Board of Trade.

Mr. Robbins: Wait a minute. I want to object to this as not proper cross-examination. Now, I can see what counsel apparently is aiming at. There is from source apparently an attempt to embarrass certain companies that are furnishing ticker service at different points throughout the city and certain efforts to find out where their wires run. I can't see any other purpose of this cross-examination except to uncover something to be used before the City Council.

The Master: I don't think it is competent to go into the details of the working of these companies, but it would be to show his connection with the companies.

(The question was read by the reporter.)

Mr. Jenks: So far it is all right, isn't it?
The Master: It is all right so far.

Mr. Jenks: (Q.) Was your connection with the management of that ticker company exercised only at the Board of Trade Building?

A. Well, I acted as manager of their Chicago business. My duties as their manager might call me outside of the Board of Trade building; doubtless often did.

Q. Did that company transmit anything over wires—

Objected to.

Q. —except market reports from the Board of Trade?

The question was objected to by counsel for complainant; the objection was sustained by the Master.

344 Q. Were the market reports sent out over the wires of the Type Telegraph Company from the Board of Trade? A. Do you mean continuous market reports?

Q. Any? A. Some market reports; yes, sir.

Q. What is that answer? A. Some market reports were.

Q. Did you state when your connection with the Type Telegraph Company ended? A. Some time in 1900.

Q. When did your connection with the Board of Trade Telegraph Company commence?

A. Do you refer to my answer to you a few minutes ago that I had been connected with the Board of Trade Telegraph Company?

Q. Yes?

A. That was a line built between Chicago and St. Louis. I don't remember exactly the year in which it was built. I don't remember exactly the year in which they ceased operation. My recollection is that it was about 1886. I am not certain about that.

Q. Has the company gone out of business? A. Yes, sir.

Q. During the time it was doing business what were your duties as superintendent of that company?

A. I was not superintendent of the company.

Mr. Robbins: Wait a moment. I object to that.
Mr. Jenks: Do you object to the question?
The Master: The last question is "What were your."
Mr. Robbins: Yes, it is too remote. I object to it.
The Master: Oh, I think he can show his connection with all these companies.

A. I was their Chicago manager in connection with the management of the Chicago & Milwaukee office. They had joint offices with the Chicago & Milwaukee.

Mr. Jenks: (Q.) Was your management of that company in regard to anything except market report business?

345 A. It had reference to general telegraph business particularly.

Q. Then it was a general telegraph company, was it?

A. Yes, sir.

Q. Did you as manager send out from the Board of Trade by that line reports, market reports?

A. To some extent, yes.

Q. When did your connection with the Cleveland Telegraph Company commence? A. August, 1900, I think.

Q. And what were your duties in that connection?

A. The general supervision of its business.

Q. All over the country?

A. Well, its Chicago business.

Q. Had that company a line of wires running to the Board of Trade?

Mr. Robbins: I object to that.

The Master: Overruled.

A. It has wires in the board of Trade.

Q. And extending where?

Mr. Robbins: Now, I object to that. It is evident what they are after.

The Master: Yes, that objection is good; it may be sustained.

Mr. Jenks: I want to except to the ruling of the Master.

Q. Did you send out over the wires of that company market reports from the Board of Trade? A. Yes, sir.

Q. And to what place?

A. Market reports are delivered by that company to a good many places in the City of Chicago. I don't know that they are necessarily sent over the wires of that company. They are delivered.

Q. Were market reports sent over the wires of that company beyond the City of Chicago? A. No, sir.

346 Q. Did that company do a general telegraph business? A. No, sir.

Q. Is that company still in existence? A. Yes, sir.

Q. Have you ceased to send out market reports from the Board of Trade over the wires of the Cleveland Telegraph Company?

Mr. Robbins: He has not said he sent them out over the wires of the Cleveland Telegraph Company. I object to the question on the ground that it is prying into the business of

the Cleveland Telegraph Company, and it is especially inappropriate on account of this controversy in the City Hall.

The Master: The objection is overruled.

Q. (Read by the reporter.) A. No, sir.

Mr. Jenks: (Q.) Exactly. What is the name of your office, as connected with that company? A. Superintendent.

Q. General superintendent?

A. No, sir; there is no general superintendent. I am superintendent of the company.

Q. Did either of those three companies, namely, the Tpye Telegraph Company, the Board of Trade Telegraph Company and the Cleveland Telegraph Company ever transmit market reports while you were connected with them to Cleveland, in the State of Ohio? A. No, sir.

Q. Did the Chicago & Milwaukee Telegraph Company ever transmit market reports to Cleveland in the State of Ohio?

A. No, sir; not that I know of.

Q. It has no wires running to that place, has it?

A. No, sir.

Q. Is the Chicago & Milwaukee Telegraph Company a general telegraph company? A. Yes, sir.

Q. It has wires running into the Board of Trade in the City of Chicago? A. Yes, sir.

347 Q. And running to what other cities than Chicago?

A. To Milwaukee through the towns between here and there.

Q. And Milwaukee is the other end of the line?

A. Yes, sir.

Q. Were you the first of this year connected with any telegraph companies except the Chicago & Milwaukee and the Cleveland? A. January 1st, 1901, do you mean?

Q. Yes? A. No, sir.

Q. Were you in the year 1900?

A. No, sir—well, with the Type a portion of the year 1900.

Q. Up until what time?

A. The first of August, I think, 1900.

Q. And which company was that?

A. The Type Telegraph Company.

Q. Since the 1st of August, 1900, you have been connected with no telegraph company doing any business on the Chicago Board of Trade, except the Chicago & Milwaukee and the Cleveland—is that correct? A. That is correct.

Q. Were the market reports from the Chicago Board of Trade sent over any other lines between August 1st, 1900, and June 1st, 1901, from the Board of Trade?

A. I believe not from August 1st, until—August 1st, 1900, until about April, 1901. I don't know exactly the date.

Q. Since April, what other telegraph company has been sending market reports from the Board of Trade Building, since April down to the 1st of June?

A. Well, there is probably a technicality there. The Western and Postal Telegraph—what I meant in my answer—were not sending the Chicago Board of Trade quotations, as I understood it to any point. They are sending them now—that is, they are repeating them automatically. They don't send them from the floor of the Board of Trade now, but there is an automatic repetition of the quotations which are sent
348 out from the floor of the Board of Trade going over their lines to various points, and that has been true since about the 1st of last April.

Q. Do you know where the Western Union obtains those market reports?

A. The market reports it has been transmitting since the 1st of April?

Q. Yes? A. I do; yes, sir.

Q. Where does it obtain them?

A. It has a connection with the Morse wire which is operated from near the wheat pit which I described in my evidence yesterday.

Q. Have you any connection, or have you had since April last, with the Western Union Telegraph Company?

A. No, sir.

Q. Does the Western Union Telegraph Company pay anybody for those reports to your knowledge?

The question was objected to by counsel for complainant; the objection was overruled by the Master.

A. Of my own knowledge, I don't know anything about it.

Q. You know that it does not pay anything to either of the companies that you represent, do you? A. Yes, sir.

Q. It does not?

A. I know in regard to that, if I am to answer that question, in regard to whether it pays anybody or not, I could not say.

Q. But it does not pay either of the telegraph companies that you represent—that is true, is it? A. That is true.

Q. And whether it pays anybody, you don't know?

A. Not absolutely.

Q. Have you any information on that subject?

A. Only such as the public has. I have heard it stated that they—

Objected to by counsel for complainant.

349 A. —that they did this that and the other thing.

Mr. Robbins: I want to protest against prolonging this examination in this way. This is evidently a fishing excursion or a scheme to delay, and not merely an effort to fix the amount of credibility that this witness should be credited with.

The Master: Ask your questions, and I will pass upon the objections.

Mr. Jenks: (Q.) Now, I last spoke of the Western Union Telegraph Company. Is there any other telegraph company sending the market reports?

A. I suppose so. Other telegraph companies are receiving them.

Q. Which ones?

A. The Postal Telegraph Cable Company, the Chicago & Milwaukee Telegraph Company—

Q. Do you know where the Postal Telegraph Cable Company receives the market reports, and from what source?

A. Yes, sir.

Q. What source?

A. They have connection with the Morse wire which is operated on the exchange floor.

Q. Operated by whom?

A. It is operated by the Cleveland Telegraph Company.

Q. And that is under your supervision? A. Yes, sir.

Q. Does the Postal Telegraph Company pay anything for those market reports?

Mr. Robbins: I object to that as not cross-examination.

The Master: Confine it as you did the last to his companies.

Mr. Jenks: Yes, put the same sort of question.

The Master: (Q.) Does the Postal Telegraph Cable Company pay anything to the companies represented by this witness? A. No, sir.

350 Mr. Robbins: That is the Postal instead of Cleveland?

The Master: Yes, the Postal.

Mr. Jenks: (Q.) Do you know to what points the Postal Telegraph Company sends the market reports? A. No, sir.

Mr. Robbins: Objected to; that is not cross-examination.

Mr. Jenks: (Q.) Do you furnish the market reports to that company to be sent to any points?

The question was objected to by counsel for complainant as not cross-examination; the objection was overruled by the Master.

A. We furnish them the reports complete; I don't know what they do with them.

Q. Is that true as to the Western Union Telegraph Company?

A. So far as I am concerned, I know nothing further than that they get the continuous reports.

Q. Do you know of any other telegraph companies than those two that get the continuous market reports from you?

A. The Chicago & Milwaukee Telegraph Company gets them.

Q. Well, then, we will say those three?

A. And the Cleveland Company gets them. Those are the only telegraph companies.

Q. Will you state, Mr. Crawford, where you obtain anything that you send out over any wires from the floor of the exchange room in the Board of Trade?

A. Well, in what capacity are you addressing me, Mr. Jenks?

Q. As a witness.

[—] Do you mean as superintendent of the Cleveland Telegraph Company, or does your question relate to the quotations which are sent out?

Q. Do you send out anything except quotations?

A. Why, I might at times.

351 Q. From the floor of that room?

A. I have sent messages, a good many messages.

Q. Private messages?

A. Certainly; anything that is filed with us for transmission.

Q. You send them out as a public telegraph operator?

A. Yes, sir; public telegraph.

Q. Do you send private messages that are handed in there by the public generally, anybody that hands them in?

A. The Chicago & Milwaukee Telegraph Company does; the Cleveland does not.

Q. The Chicago & Milwaukee Telegraph Company?

A. Yes, sir.

Mr. Robbins: You mean from the floor of the exchange?

Mr. Jenks: From the floor of the exchange room in the Board of Trade.

A. Such messages are filed with us; yes, sir.

Q. And filed by anybody who hands them in at that place; is that correct? A. That is the custom; yes, sir.

Mr. Robbins: Your question is whether anybody of the public can file a message on the floor of the exchange with his company?

Mr. Jenks: Read the question.

(The question is read by the reporter.)

Q. Now, Mr. Crawford, where do you get what is sent out over the wires from that room, what you call market reports?

(By request of counsel the question was read by the reporter.)

A. We have reporters in the various trading pits who record the prices—

Q. I want to stop you right there. Where do you get them?

A. From our reporters.

352 Q. From whose reporters?

A. The reporters of the Cleveland Telegraph Company.

Q. And no other reporters? A. No others.

Q. Do you get what you send over the wires in no other way than from men in the employ of the Cleveland Telegraph Company? A. That is correct.

Q. You said yesterday that you stood yourself right by the side of the wheat pit. Do you stand there from the commencement of business at half past nine in the morning or a quarter past nine, until 1:15 in the afternoon.

A. I don't remember of making the remark. I don't stand by the wheat pit.

Q. You don't stand there at all?

A. Not continuously. You are mistaken, I think, in my statement. I don't think I made any such statement.

Q. Where are these slips handed to you?

A. They are not handed to me.

Q. Well, do you know where these clerks or messengers get their information which they write upon slips?

A. Yes, sir.

Q. Where do they get it?

A. They are placed in the pits so that they can hear the transactions as they are made.

Q. What is it that they write down upon the slips?

A. The price and the commodity traded in.

Q. Where do they get any price?

A. They hear the transactions made. The transactions are verbal.

Q. What can they hear?

A. They can hear a man offer to sell at a price and another man accept the offer and buy it, or vice versa.

353 Q. You have been familiar with the mode of making the transactions there for twenty years, have you?

A. Yes, sir.

Q. You are able to tell us what it is that those messengers gather up and write on a slip, are you not?

A. Yes, sir; I should be, I think.

Q. Will you give us an example of what is said there from which the messengers write something on a slip of paper?

A. Well, a trader in the wheat pit, for example, offers to sell—

Q. What does he say?

A. Why, he says, "Sell 25 May wheat," very likely, or leave off the word "wheat"—"seventy-five"; or another man might say, "I will buy 25 May wheat at seventy-five." There may be or may not be a transaction. If there is the reporter catches the transaction.

Q. If there is, what is said?

A. Sometimes a man says "sold" and sometimes he just puts up his finger.

Q. What does that mean?

A. It means that he accepts what the other fellow offered to do; accepts the otherside of the trade.

Q. Well, if he holds up his finger, what does the messenger boy write down on his slip of paper?

A. He hears the price and probably hears there was a transaction at that price, and records the transaction at seventy-five.

Q. If he don't hear it, what does he record?

A. He probably wouldn't record anything.

Q. Are those messenger boys under your control in any way?

A. Well, I was talking about the reporters. Yes, they are both the reporters and messengers.

Q. You call them reporters. Are they under your control?

A. Yes, sir.

354 Q. They act under your directions? A. Yes.

Q. Now, they put down on a slip the commodity and the price? A. Yes, sir.

Q. They put down on the slip every transaction that is made there at which a price is fixed by one man offering to sell and another man offering to buy—is that it?

A. If there is a change in the price, yes. There may be a great many transactions at a given price.

Q. At the same price?

A. In that case they don't do anything.

Q. But if there is a change in price, they put it down?

A. Yes, sir.

Q. Are those transactions which are so put down in every instance for the sale and future delivery of commodities?

A. Well, we record the transactions of cash stuff as well as future.

Q. Do you have any transactions there of cash stuff?
A. Yes, sir.
Q. In what manner are those transactions made? Give us the whole proceeding of making one of those transactions.
quite
A. I don't think it is necessary for me to do that. The transactions are made, however, and when the transactions have been made, we report them. If you were a member of the Board of Trade—
Q. Wait one minute, if you please? A. All right.

Mr. Jenks: I think it quite necessary that you answer the question. Mr. Reporter, read the question to the witness.

(The question was read by the reporter as follows: "In what manner are those transactions made? Give us the whole proceeding of making one of those transactions"—

Q. —which results in the messenger writing on a slip of paper the price of cash stuff?
A. Our reports of the transaction as made outside of the pits where they deal in futures which you refer to—
355 Q. Wait. I am just speaking of the pits, and I ask you if any transactions are had there?
A. I didn't say in the pits. Excuse me.
Q. That is what I have been speaking of all the time?

The Master: You now wish to confine your question to the pits?
Mr. Jenks: Yes, sir.

A. If you are talking about pits then I think it is very seldom—it might be that there are transactions made that are not in futures in the pits, but I should think it very seldom. If they were made, I should think that our reporter there would hardly catch it.
Q. You don't know of any ever having been made there, do you?
A. No, not right in the trading—not right in the pit, no, what I mean by the pit. I don't know whether you know what I mean or not.
Q. Now, what you have said with reference to the wheat pit does that apply to the oat and corn pit and the place where they sell pork or ribs?
A. Oh, yes; they are all practically alike in that regard.
Q. All the same?
A. I don't say, understand, that there are no cash transactions made there. I don't say there are none. I say there aren't a great many.

Q. Just hold on a minute and I will get to it. So far, we have been speaking of the pits there— A. Yes, sir.

Q. —and where transactions are had by one man offering to do something and another man accepting the offer?

A. Yes.

Q. Now, in those places, do they offer to do anything or does the other man accept the offer except in transactions for the future?

A. I think I have answered that. I say, I don't think
356 they do very often.

Q. Now, where is the place on the floor of the exchange room of the Board of Trade where people buy and sell cash commodities?

A. In the sides of the hall, away from the center of the room generally.

Q. There is no place fixed for that?

A. Oh, yes, for different commodities.

Q. Where—take wheat?

A. I say around the sides of the hall.

Q. Take for instance, where is the place set apart for the buying and selling of cash wheat?

A. There are a great many sample tables there where most of the cash trading is done, if you mean car lot trading.

Q. I don't mean car lot trading. I mean for the immediate delivery of the wheat—is there such a place?

A. I don't know that there is any place set apart for it; no, sir.

Q. You don't think there is. Now, is there any place set apart for cash transactions, at which is stationed a clerk, a messenger, or whatever you may call him, to gather and mark down on a slip the prices? A. No, sir.

Q. Is that true as to every other commodity than wheat?

A. Yes, sir.

Q. Then if the reporters or messengers get any prices which they put on a slip of paper for cash and immediate delivery, where do they get that?

A. They get it from the men who are trading in such commodities.

Q. That is to say, they go around just like a newspaper reporter?

A. They are clever reporters; they know who is doing business and where it is being done.

Q. They go around and interview somebody?
357 A. And get the information.

Q. Eh? A. They get the information; yes, sir.

Q. Well, they go around and interview somebody just like a newspaper reporter, don't they? A. Very likely, yes.

Q. And do you send out over the wires of your company every day the changes in price for cash commodities?

A. Yes.

Q. As the transactions occur?

A. Not continuously; no, sir.

Q. And you don't as the transactions occur either, do you?

A. No, sir; not always.

Q. You do, if you happen to? A. If we happen to.

Q. But you don't make a business of doing that, do you?

A. Not continuously.

Q. The real business that you do up there in sending out market reports is to send out the reports of transactions for future delivery?

A. That is the large volume of it; yes, sir.

Q. Well, that is what you are really there for, isn't it?

A. We are there to record all of it, but that is the great volume of it.

Q. The cash transactions you don't pay much attention to, do you? A. We think we cover it.

Q. You don't pay much attention to it do you?

A. Well, you can draw your own inference.

Q. Well, I draw that, but I ask you whether you do?

A. I have said that we think we cover it.

Q. But you don't pretend to send out over the wires information as to every transaction in cash commodities and the fluctuations in prices for cash—

A. That is true. I think I stated that.

Q. You have stated that there are tickers attached to some wires and that those tickers are located in different places. Do you know how many there are in the City of Chicago?

A. Only approximately.

Q. Approximately, how many are there?

358 A. Do you refer to the tickers sending the continuous market reports?

A. Yes, sir? A. Approximately 150, I should think.

Q. Are they located in public places throughout the city?

A. That depends on what a public place is.

Q. Such as hotels, saloons, general offices?

A. I don't know of any in hotels or saloons. I am not sure that there are not tickers quoting the continuous markets in some hotel or saloon, but I think there are none.

Q. Generally, where are they?

A. In private offices and in business offices, banks—

Q. Do you call a bank a public place?

The question was objected to by counsel for complainant as calling for a conclusion.

A. I might call it that.

The objection was sustained by the Master.

A. I don't know as it would make any difference what I called it.

Q. How many banks in the City of Chicago have tickers in them?

A. Three that I know of. I don't know whether there are more or not.

Q. Which ones are they?

A. Well, let me see. No. I only know of two. Correct that to two.

Mr. Robbins: Now, I want to say that I think this cross-examination is going beyond the direct. I simply called this witness to show the method of business.

The objection was overruled by the Master.

Mr. Jenks (Q.) What two banks?

A. The Bank of Montreal and the Chicago National—I believe each has one.

Q. You described yesterday how the tickers are operated on the tape that runs from the ticker—are the words printed— A. Yes, sir. 359

Q. —so that anybody who can read English can read them?

A. Yes, sir.

Q. The figures, are they made in such shape that any person who can read English can read the prices? A. Yes, sir.

Q. And read the commodities? A. Yes, sir.

Q. How long do you say it takes from the moment when the message is sent from the Board of Trade indicating the market price before it will appear on the tape at one of those tickers? A. A few seconds only.

Q. Are there tickers in other cities than Chicago?

A. Yes, sir.

Q. Are there any in Cleveland in the State of Ohio?

A. There are tickers; yes, sir.

Q. Are the messages transmited there at the same time that they are to tickers in Chicago? A. I don't know.

Q. You are a telegraph man? A. I am, yes.

Q. And what do you think?

The question was objected to by counsel for complainant; the objection was sustained by the Master.

Q. As a telegraph man, do you know that a message over a wire will transmit the information to any number of tickers at the same moment, that are attached to that wire, whether those tickers be located in Chicago or in any other city?

A. I know what can be done. You asked me what was done. I know what can be done; yes, sir.

Q. What can be?

A. It would not be practical to operate tickers in Cleveland from Chicago; it is possible to do it, but it would not be practical.

360 Q. Do you know whether tickers are operated there, or in any other city than Chicago by wire running from Chicago?

A. Do you mean that the impulse to the ticker in the distant city is given in Chicago?

Q. That distance? A. I think it is not done.

Q. Is it done in Milwaukee? A. Not from here.

Q. Eighty miles away? A. Not from here.

Q. Not from from here? A. No, sir.

Q. Is it done in any city other than Chicago from here?

A. Not that I know of.

Q. Well, you don't know. Is that it?

A. Well, I should be very much surprised, if it is done. The difficulties are too great; it would not pay to do it.

Q. But you do know that the tickers in Chicago will indicate the market prices within fifteen seconds from the time those prices are sent out from the operator?

A. Yes, sir; ordinarily that is true.

Q. Is it your idea that those market reports are not known in Cleveland at the same instant that they are known in Chicago by the tickers?

Objected to; question withdrawn.

Q. What is a ticker transmitter operator?

A. The person who uses the keyboard for the purpose of transmitting from the transmitting instrument to the receiving ticker.

Q. Where is he stationed with reference to these market reports in Chicago?

A. He may be stationed anywhere. I don't know which one you refer to.

Q. Do you know of any that is stationed anywhere?

A. Yes, sir.

Q. Where?

A. In the Board of Trade Building on the ground floor.

Q. Do you know of any stationed anywhere else?

361 A. Yes, sir.

Q. Where?

A. In the Rialto Building, on the first floor, I believe.

Q. Anywhere else?

A. I guess they are all in those two places.

Q. Who employs those two men?

A. The Cleveland Telegraph Company employs the one I have reference to in the Board of Trade Building.

Q. Who employs the other?

A. The one in the Rialto—I don't know whether he is in the employ of the Western Union Telegraph Company or not. I presume so, or the Gold & Stock Telegraph Company.

Q. Is that the Western Union Telegraph Company office?

A. I guess they call it the Gold & Stock Telegraph Company.

Q. Does the Gold & Stock Telegraph Company operate anything but tickers? A. I don't know.

Q. Do you know what company controls the tickers?

A. No.

Q. Don't you know that no company controls them except the Western Union Telegraph Company? A. The tickers?

Q. Yes?

A. I know that The Gold & Stock Telegraph Company name appears. I don't know what the relations are.

Q. You don't know? A. No.

Q. Does any company that you represent pay the Board of Trade anything for the market reports? A. Yes, sir.

Q. Which company? A. Both companies.

Q. Do you know how much they pay?

Mr. Robbins: Objected to; that is shown in the contract.

Mr. Jenks: Both companies—that means the Chicago & Milwaukee and the Cleveland Telegraph Company.

The objection was sustained by the Master. To which ruling of the Master counsel for defendants then and there duly excepted.

362 Q. Do you know whether any other price is paid by either of those companies to the Board of Trade than the price fixed by those papers that were offered in evidence yesterday? A. I don't know of any other.

Q. Do you make the payments yourself? A. No.

Q. Who does?

A. How do you mean, do I make them myself?

Q. To the Board of Trade?

A. I could find out just exactly how the matter stands. I don't carry it in my head.

Q. Do you make the payments? A. Not personally.

Q. Who does? A. They are made through our offices.

Q. Who makes the payments?

A. The company, I suppose, by the principals—the company is the principal. I am not.

Q. Who is the individual who actually makes the payments? A. Probably the cashier.

Q. Who is the cashier?

A. I really don't quite see the drift or the connection of this.

Q. I don't want you to. All I want is the fact.
A. I have given the facts.

The Master: The question is competent. Answer. Who is the cashier?
A. We have had several of them.
Mr. Jenks: (Q.) Who was the cashier?
A. At what particular time do you mean—now or when?
Q. Who was the cashier of the Chicago & Milwaukee Telegraph Company up to the 1st day of June of this year?
A. His name was Loomis, I believe.
Q. What was his first name? A. Charles.
Q. Where does he live?
363 A. I don't know where he is now. He is not in our employ at present.
Q. When did he leave your employ?
A. About the 1st day of July.
Q. Where did he live previous to the 1st day of June?
A. He lived in Chicago, on the 1st day of June, he lived in Chicago.
Q. Where? A. I don't know.
Q. Where was his office? A. In the Rialto Building.
Q. Is that the office of the Chicago & Milwaukee Telegraph Company? A. Yes.
Q. And he had his office there? A. Yes.
Q. What is the name of the cashier that is there now?
A. I think his name is Robinson. He has just come to us and I am not just exactly certain whether it is Robinson or Roberts.
Q. Who is the cashier of the Cleveland Telegraph Company—who was previous to the 1st day of June of this year?

The question was objected to by counsel for complainant as not proper cross-examination. The objection was overruled by the Master.

A. The same man that I mentioned before, Loomis, acting in the same capacity.
Q. Are those two companies run together?
A. So far as their offices are concerned; yes, sir.
Q. As far as their offices are concerned?
A. No, offices, I said; not officers.
Q. You were manager for both? A. Yes, sir.
Q. Superintendent for both? A. Yes, sir.
Q. The offices the same? A. The same room; yes, sir.
Q. Where was the Chicago & Milwaukee Telegraph Company incorporated? A. In the State of Wisconsin.
364 Q. Where was the Cleveland Telegraph Company incorporated? A. I don't know positively.

Q. How long had it been incorporated or doing business when you became connected with it?

A. I was connected with it from the first.

Q. Did you take part in the incorporation of it?

A. No, not that I recall.

Q. Oh, I omitted one thing that I wanted to ask you; whether in or about these pits on the floor of the exchange room, while parties there are offering to buy and sell any commodity, is the commodity there present? A. In the pit?

Q. Yes? A. I never saw it.

Q. Did you ever see any of the commodities in the exchange room of the Board of Trade, except mere samples?

A. I have never seen the bulk that was traded in.

Q. You never have?

A. Never have seen the bulk of the commodity.

Q. And the commodities are not there present at the time when a man offers to buy or sell, he don't have the commodity there that he offers to buy or sell, does he?

A. Not in avoirdupois. He may have the warehouse receipt. I can't say as to that.

Q. Does he show it? A. I don't know.

Q. Did you ever see him show it?

A. I think I have; not often.

Q. How frequently—give us the time when you ever saw it?

Mr. Robbins: I object to that. Now, I think we ought to have this cross-examination confined to a limit. When we get down to Cincinnati, we want all the results that—

The Master: I think he has got to about the end. He may answer that question.

365 A. I can't give you the time.

Mr. Jenks: Can you give us the average number of transactions at those pits in a day? A. No, sir.

Q. Well, you can tell whether there are a few or many?

A. There are many.

Q. Amounting to thousands every day?

A. Oh, I should think so.

Q. A good many thousand?

A. Well, it would be a mere guess on my part. I couldn't say.

Q. Can you tell the amount paid by these telegraph companies to the Board of Trade per year?

Objected to; question withdrawn.

Q. You have stated that the cost of gathering these market reports to the Board of Trade is about $600 a month. Can you tell how much these telegraph companies pay the Board of Trade per month?

The question was objected to by counsel for complainant. The objection was sustained by the Master. To which ruling of the Master counsel for defendants then and there duly excepted.

Mr. Jenks: I will ask that question, if the Master please, for the purpose of trying to show that the paper called a contract fixes one price, while the amount paid is entirely different price, and the question that I now raise, that I now ask is whether he knows how much the telegraph companies pay the Board of Trade per month, after he has fixed the amount that it costs the Board of Trade to gather the market reports.

Mr. Robbins: Well, I object to the question.

The Master: Objection overruled.

Mr. Robbins: Then I instruct the witness not to answer. You can take that to Cincinnati.

366 Mr. Jenks: (Q.) Mr. Crawford, you have stated that it costs the Board of Trade to gather these market reports about $600 per month. Do you know how much per month these telegraph companies that you represent, or either of them, pay or pays the Board of Trade per month for the market reports?

Mr. Robbins: Objected to.

The Master: Overruled. Answer, Mr. Witness.

Mr. Robbins: The same instruction.

Mr. Jenks: The question is merely whether he knows.

The Master: That has nothing to do with what it is; simply whether he knows or not.

Mr. Robbins: Well, I will stand by the objection. I am going to stand on that to this line of cross-examination. It is not proper cross-examination.

The Master: The objection overruled. The witness is directed to answer the question.

Mr. Robbins: The same instructions to the witness.

Mr. Jenks: (Q.) Do you know?

Mr. Robbins: I instruct the witness not to answer.

The Master: He instructed him not to answer.

Mr. Jenks: (Q.) Mr. Crawford, what amount per month do the telegraph companies represented by you, or what amount per month does either one of them, pay to the Board of Trade for these market reports?

Mr. Robbins: The same objection.

The Master: Overruled.

Mr. Robbins: The same instruction.

Mr. Jenks: If the Master please, I insist upon the witness answering these questions.

The Master: The witness is directed to answer.

Mr. Robbins: I ask that the materiality of the question be certified to Cincinnati.

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Mr. Jenks: Mr. Witness, will you answer the question?

Mr. Robbins: (Continuing)—and the obligation of the witness to answer.

Mr. Jenks: Will you answer the question?

Mr. Robbins: Well, but after the request to be certified, I should think.

Mr. Jenks: I am asking the witness, Mr. Robbins.

Mr. Robbins: No, it is for the Master, not for the witness to say—

The Master: Well, your witness should [illegible] answer, or refuse to answer.

A. Well, I don't know anything about it. I am just waiting here for the thing to be settled.

Mr. Jenks: The Master says you shall answer.

A. The Master says I shall answer or refuse to answer.

Mr. Jenks: Well, proceed.

A. I am entirely impersonal in the matter. So far as I am concerned, I don't want to answer the question unless I am compelled to. If I am compelled to answer it, I am willing to do so.

Mr. Jenks: Answer.

The Master: Do you, Mr. Robbins, represent this witness as his attorney?

Mr. Robbins: Yes, I represent his company.

Mr. Jenks: That is not the question that was put to you, Mr. Robbins.

Mr. Bobbins: Oh, I guess I represent the witness. How is that, Mr. Witness?

The Witness: Yes.

Mr. Jenks: I think the witness better answer, and save further trouble.

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The Master: Well, we will have to make a record. The witness will have to answer or must refuse to answer upon the advice of his counsel, in order that the record may be straight, and it for the witness to determine what he shall do.

The Witness: Is it your advice that I refuse to answer the question?

Mr. Robbins: Yes.

A. Then I refuse to answer.

Mr. Jenks: I will ask that the matter be certified by the Master to the Court.

Q. Mr. Crawford, I hold in my hands two papers that were offered in evidence yesterday by Mr. Robbins. One purports to be an agreement between the Board of Trade of the City of Chicago and the Cleveland Telegraph Company. The other purports to be an agreement between the same Board of Trade and the Chicago & Milwaukee Telegraph Company—

Mr. Robbins: Mr. Jenks, so far as the Milwaukee Telegraph Company is concerned, I don't have any objection to his answering. I don't instruct him not to answer as to them, because I don't represent them in any way.

The Master: Well, then you can go on on that theory. That will save the point.

Mr. Jenks: (Q.) Mr. Witness how much does the Chicago & Milwaukee Telegraph Company pay to the Board of Trade for market reports per month?

A. It depends on the number of customers it has for the market reports.

Q. Do you know how much it pays per month?

369 A. I don't know. We have a contract with the Board of Trade covering that.

Q. Do you know how much it pays per month? A. No.

Q. You don't know?

A. It is not a fixed amount. If it were, I would know.

Q. Do you know how much the Cleveland Telegraph Company pays to the Board of Trade per month for market reports?

Mr. Robbins: That is the same question.

Mr. Jenks: What's the same question?

The Master: I understand, so far as the Cleveland Company is concerned the witness refuses to answer.

Mr. Jenks: Yes.

The Master: And as to the Chicago & Milwaukee he does answer.

Mr. Jenks: (Q.) Does the Cleveland Telegraph Company pay the Board of Trade anything for market reports?

The Master: Any objection to that?

Mr. Robbins: No, I have no objection to that.

A. Yes.

Mr. Jenks: (Q.) How much does it pay—Do you know how much it pays?

Mr. Robbins: Now, that is the same thing over again. I object to that.

The Master: You have got that in the record once.

Mr. Jenks: (Q.) Does it pay any other or different price than that named in this paper which is called an agreement, and which I have just referred to, and which is marked here as complainant's Exhibit 1?

Mr. Robbins: The same objection.

370 The Master: Objection overruled.

A. I refuse to answer the question.

Mr. Jenks: (Q.) Does that Company, the Cleveland Telegraph Company, pay to the Board of Trade the same price that is fixed in the agreement, plaintiff's Exhibit 1?

Mr. Robbins: Same objection.

The Master: Overruled; witness instructed to answer.

Mr. Robbins: The same instruction to the witness and request for a certificate certifying the question.

A. I refuse to answer.

Mr. Jenks: (Q.) Does the Cleveland Telegraph Company furnish to the Board of Trade every sixty days a full and complete list of the names and locations of persons, firms or corporations to whom it is furnishing or has furnished during the preceding sixty days said complete and continuous quotations of said Board of Trade?

Mr. Robbins: Objected to.

The Master: Overruled.

Mr. Robbins: I ask that the last question be certified to the Court, and instruct the witness in the meantime not to answer.

The Master: The witness is instructed to answer.

A. I refuse to answer the question.

Mr. Robbins: My objection is that it is not proper cross-examination and it is immaterial.

Mr. Jenks: (Q.) Does the Cleveland Telegraph Company, on or before the 10th day of each month, or has it ever, since the 31st day of July, 1900, rendered to the said Board of Trade an account showing the number of persons furnished by it with continuous quotations, as defined in this so-called agreement, and also with non-continuous quotations for the

371 preceding month, and accompany such statements with a remittance for the amount due said Board of Trade, under this so called agreement?

Mr. Robbins: Objected to for the same reasons.

The Master: Overruled.

Mr. Robbins: I ask that the question be certified, and in the meantime I instruct the witness not to answer.

The Master: Witness directed to answer.

A. I refuse to answer the question.

Mr. Jenks: (Q.) Does the Cleveland Telegraph Company refuse to furnish market reports, or to give them to any distributing telegraph company, except when so directed by the Board of Trade of the City of Chicago?

The question was objected to by counsel for complainant as calling for a conclusion, and not being in proper form. The objection was overruled by the Master.

A. I don't make head or tail of it.

Q. Does the Cleveland Telegraph Company refuse to give the market reports to any other telegraph company?

A. I can't answer the question. You say, do we do so and so.

Q. Do you give the market reports to every telegraph company having offices in the City of Chicago?
public

A. I guess we do; I am not sure.

Q. Do you give these reports to those companies for the purpose of transmission to the public?

A. I don't know what the purpose is.

Q. Mr. Witness, do the Chicago & Milwaukee Telegraph Company and the Cleveland Telegraph Company pay the same price to the Chicago Board of Trade for market reports?

Mr. Robbins: Objected to. The contracts show what the price is. How is it material to this case, and how is it
372 cross-examination, as to what either company pays?

The Master: Objection overruled.

Mr. Robbins: Well, I take the same position as to the Cleveland Company as already taken, and ask that the question be certified.

The Master: Witness instructed to answer.

A. I refuse to answer the question.

Mr. Jenks: I ask that it be certified to the Court, and all of these matters in the same certificate, and we will have the ruling of the Court upon the competency of the evidence, and upon the question as to whether the witness shall answer. I believe that is all for the present.

Redirect Examination

By Mr. Robbins:

Q. Mr. Crawford, does any telegraph company get the quotations from the Cleveland Telegraph Company?

A. Not by an arrangement with that company, no, only under the directions—

On motion of counsel for defendants the answer was stricken out by the Master as not responsive.

Q. Does the Cleveland Telegraph Company have any arrangement with any telegraph company for the furnishing of those quotations?

The question was objected to by counsel for defendants. The objection was overruled by the Master.

[A.] Now, the question is, does the Cleveland Telegraph Company have any arrangement with any other telegraph company?

The Master: You may answer by yes or no.

A. Yes.

Mr. Robbins: (Q.) By which the Cleveland Telegraph Company furnishes quotations to any other telegraph company? A. No, sir.

373 Q. Now, does the Cleveland Telegraph Company furnish any quotations to any other telegraph company?

A. No, sir.

Q. What?

A. No, sir,—not—I don't want to get mixed on that. There is a technicality there. I have explained the whole situation. I have said that the Cleveland Telegraph Company operates the wires on the Board of Trade, and that those wires lead to the offices of the other companies.

Q. And the only two companies are the Western Union and the Postal Telegraph Company?

A. Yes, and the Milwaukee. The Cleveland operates the line. I have stated that it operates on the floor of the Board of Trade, but it has no arrangement with the other companies.

Q. Is that with or without the concurrence of the Board of Trade that the Cleveland Company operates?

The question was objected to by counsel for defendants as immaterial and calling for the conclusion of the witness.

Mr. Robbins: Change that to "collects the quotations" instead of "operates."

The question as amended was read by the reporter.

The objection was sustained by the Master.

Q. Did you have any talk with the Board of Trade or its officials about collecting the quotations on the floor of the exchange?

Mr. Jenks: I object to that question. You have offered an agreement here.

Mr. Robbins: That does not have anything to do with the mere collection on the floor of the exchange, Mr. Jenks.

The objection was overruled by the Master.

A. Yes, sir.

Q. When? [—] About the 1st of August, 1900.

374 Q. Now, with whom was that?

A. With the President and other officials of the Board of Trade.

On motion of counsel for defendants the words "and with other officials" were stricken from the answer by the Master.

Q. Well, what conversation did you have with the President on that subject?

The question was objected to by counsel for defendants.

The objection was overruled by the Master.

A. The question is, what was said?

Q. Yes?

A. In effect, that the Board of Trade wished to make an arrangement with some one familiar with the operation of Morse wires and the necessary apparatus and machinery for collecting quotations in the exchange hall, and asked us if we could undertake to do that work. I believe that was the effect of the conversation.

Q. What did you say?

A. I said we could do it; that we could furnish everything necessary, and that we would be very glad to do it.

Q. Was it before or after that arrangement that you, the Cleveland Company, took up the work of collecting and transmitting these quotations?

A. It was after that arrangement, or as soon as the arrangement was completed.

Q. Has there been other conversation between you and the Board of Trade President or any official of the Board of Trade since that on that subject? A. Not on that subject.

Q. Is it pursuant to that talk that the Cleveland Company is now collecting quotations in the manner testified to?

The question was objected to by counsel for defend-

375 ants as calling for a conclusion.

The objection was overruled by the Master.

A. Yes, sir; pursuant to the arrangement as made, resulting from that talk.

Q. Can anybody enter the Board of Trade, the floor of the exchange, without some ticket or right to pass in?

The question was objected to by counsel for defendants. The objection was sustained by the Master.

Q. Is the public at large admitted to the floor of the exchange?

The question was objected to by counsel for defendants as not redirect examination.

The objection was sustained by the master.

Q. Is there a doorkeeper at each entrance of the exchange hall? A. Yes sir.

Q. What authority, if any, do you receive to pass the doorkeeper?

A. I have a ticket, which is issued to me, giving me the right to enter.

Q. What authority, if any, do these messengers, boys and telegraph operators and quotation collectors under your control have to pass the doorkeepers?

A. They have the authority of the Board of Trade with a ticket issued to them, giving them the right to pass the doorkeepers.

Q. Do you mean to say that any member of the public could go upon the floor of the exchange to the desk that your Milwaukee Telegraph Company has there, and deliver a message for transmission?

The question was objected to by counsel for defendants on the ground that the witness had not made such a statement.

The objection was overruled by the Master.

A. I didn't mean to say that; no, sir.

376 Q. Do you receive [and] telegrams at your office on the floor of the exchange, except such as come from the members?

A. Why, we might get a telegram from a visitor, from some visitor to the floor.

Q. But can anybody?

A. What I meant to say was that such people as are on the floor may or may not file messages at our office. If they do, we receive them.

Q. Does the general public have access to that office there?

The question was objected to by counsel for defendants as calling for a conclusion of the witness.

The objection was sustained by the Master.

Q. How many collectors do you have outside of those stationed at each of the pits, collectors of quotations?

A. Two.

Q. Now, what is their duty?

The question was objected to by counsel for defendants as immaterial. The objection was overruled by the Master.

Q. What do these collectors do—What is their work?

A. They watch the flax market, the barley market, the rye market, the cotton market, so-called, and look after—

Q. What do they watch it for?

A. Sometimes those markets are active; sometimes they are not. While the trading is practically continuous in wheat, corn, oats and hog products, there are times when there is other little trading in flax, and there are times when there is almost continuous trading in flax; there are times when there is a good deal of trade in barley and times when there is hardly any trading in barley—

Q. Yes, but the question is, what do these men watch those markets for?

A. For the purpose of recording the prices made
377 when there are transactions.

Q. And when they record the prices, how do they do it?

A. They write the record on a slip of paper, and send it to the transmitting operator.

Q. The same transmitting operator that you have testified about? A. The same operator, yes.

Q. When you speak of cash wheat, what do you mean? Is there a part of the Board of Trade set apart for car-lot sales?

A. I don't know that there is a part set apart for that purpose. There is a place where car-lot sales are made over by the sample tables.

Q. Is that [—] you mean by cash wheat? A. Yes, sir.

Q. Is it the sale of car-lots? A. It is the sale of car-lots.

Q. Now, isn't wheat sold in other quantities and under other circumstances than in car-lots on the Board of Trade? I am speaking of actual sales of cash property? A. Yes, sir.

Q. Those are not confined to sales around the sample tables that you spoke of?

A. No, sir; they are sales or transactions on warehouse receipts as I understand it. The article may be one grade or another. The transactions are based upon the quality of the sample shown, which has not yet been inspected or been through the warehouse, perhaps.

Q. Now these sales of car-lots are different from the sales of round lots of wheat, are they not? A. Yes, sir.

Q. There are sales of round lots of wheat for immediate delivery are there, on the Board of Trade? A. Yes, sir.

Counsel for defendants objected to the above examination as not proper redirect examination.

Q. What do you mean by round-lots, Mr. Crawford?
378 A. Five thousand bushels or upward.
Q. Now where on the floor of the exchange are sales of round lots of cash stuff made?
A. I don't know of any designated spot for that either. A transaction is liable to occur in any portions of the room at any time.
Q. Are they made in the pits?

The question was objected to by counsel for the defendants as leading, and as having been answered.
The objection was overruled by the Master.

A. I think my answer was before that I have very seldom seen them—there may be—
Q. How much of the time do you spend around the pits?
A. I spend very little time in the pits themselves. I am ordinarily what is called outside of them, down on the floors.
Q. How much of your time in the market hours do you spend near enough to any pit to know whether cash property is sold in the pits or not?
A. I don't spend enough of my time there so that I would know ordinarily.
Q. Well, within the time between 9:30 and 1:15 in a day, how much of your time do you spend near enough to any pit to know whether or not a sale in the pit is of cash lot or not?
A. None practically.
Q. When these sales of round lots are made, is it, or is it not the duty of your collectors to note the sale and send it to the operator, if it is one varying from the previous quotation?

The question was objected to by counsel for the defendant; the objection was sustained by the Master.

Q. What instructions, if any, as given to your employees with respect to collecting quotations of round lots of
379 property sold for immediate delivery?

The question was objected to by counsel for defendants. The objection was overruled by the Master.

A. They have no specific instructions in regard to that.
Q. Well, what instructions have they about collecting quotations?

The question was objected to by counsel for defendants as repetition. The objection was sustained by the Master.

Q. Do the instructions that are given to the collectors covering the collecting and sending of those quotations to the operators cover round lots sold for immediate delivery?

The question was objected to by counsel for defendants as leading, incompetent and repetition.
The objection was sustained by the Master.

Q. Do they do that? A. Do they report cash transactions?
Q. Yes.
A. We don't attempt to continuously, no. There may be a number of—a good many transactions made that are not reported.
Q. Well, if a cash transaction is made that varies the cash price, and one of your collectors is present and knows of it or sees it, is it his duty to report that transaction to the operator?

The question was objected to by counsel for defendants.

Q. Does he do that? A. Yes.

The question was objected to by counsel for defendants as assuming that the price of cash commodity may vary the price of a future transaction in that commodity.

The Master: Just repeat the question?

(The question was read by the reporter.)

The Master: What does he do?
Mr. Robbins: (Q.) What does he do?

A. He records the transaction; that is, the prices.
Q. What?
A. He records the transaction if it is made in his
380 presence, if he sees it made.
Q. What does he do with it when he records it?
A. Gives it to the telegraph operator who is sending out quotations.
Q. These men you spoke of, what about their collecting quotations on flax-seed—do they have anything to do with that?
A. Yes, sir.
Q. What proportion of the quotations on flax-seed transactions do they collect?
A. Do you mean as to the transactions made or as to the men?
Q. As to the transactions made as to the different quotations made changing the quotations?
A. I think they collect practically all of them, I think that practically all changes are recorded.

Q. In flax-seed? A. Yes, sir.
Q. By one or the other of these two men?
A. By one or the other of them.
Q. Whether they are sales for immediate or future delivery?
A. Yes, sir.

Recross-Examination

By Mr. Jenks:

Q. Mr. Crawford, who were present when you had your conversation with Mr. Warren, President of the Board of Trade, about which you have just testified?
A. Mr. Warren, Mr. Robbins—
Q. You mean this attorney Robbins?
A. The attorney, Mr. Robbins, Mr. Requa, I think—
Q. Who is he?
A. I believe he was one of the members of what is called the quotation committee.
Q. Of the Board of Trade?
A. Yes, sir; a director of the Board of Trade; Mr. Baxterm I think.
Q. A member of the Board of Trade?
381 A. A director of the Board of Trade and also a member of the so-called quotation committee. I think those gentlemen were all present.
Q. And you? A. Yes, sir.
Q. Representing the Telegraph Company? A. Yes, sir.
Q. Which telegraph company?
A. The Celeveland Telegraph Company.
Q. Who else representing that Company?
A. I think no one at that time, the first time.
Q. You had several talks, did you, upon the same subject?
A. Yes, sir.
Q. And the subject of the conversation was about you representing the Cleveland Telegraph Company collecting the market reports, was it? A. Yes, sir.
Q. Did you, representing the Cleveland Telegraph Company, agree to collect the market reports on the floor of the Board of Trade? A. Yes, sir.
Q. Have you since been collecting those reports under that agreement? A. Yes, sir.
Q. Is that agreement in writing?
A. I can't say as to that whether their agreement is in writing or not.
Q. When was it made? A. About the 1st of August, 1900.
Q. And you don't know whether there is an agreement in writing? A. I can't say.
Q. If there is one who has it? A. I couldn't say that.
Q. Who is the president of the Cleveland Telegraph Company? A. Well, I don't even know that positively.

Q. Who is the Treasurer of the company?
A. I don't know who the officers are.
Q. Who is the Secretary of that Company?
A. I believe Mr. Tilden of Cleveland, Ohio; but I
382 not absolutely certain of that.
Q. Who has charge of the papers of that company?
A. I don't know.
Q. Who has charge of the office of that company in Chicago?
A. I suppose that I do.
Q. You do? A. Yes.
Q. Have you charge of the papers that belong to that company, all of them? A. No, sir.
Q. Who has charge of those that you have not?
A. I haven't charge of any of their papers, as a corporation.
Q. You have charge of the business?
A. I have charge of the business here.
Q. Where is their main office?
A. Well, I don't know what you mean by their main office.
Q. Well, I mean the office where their offices are?
A. I don't know whether I know. I know where the business is done.
Q. Where is the business done?
A. In the Board of Trade Building.
Q. In Chicago? A. Yes, sir.
Q. What room? A. On the floor of the Board principally.
Q. What floor? A. On the exchange floor.
Q. On the floor of the exchange room of the Board of Trade?
A. And in room 15, I think, it is called, on the ground floor.
Q. Who occupies room 15?
A. The Cleveland Telegraph Company.
Q. Who are the stockholders in that company?
A. I don't know.

The question was objected to by counsel for the complainant.
Q. Are you one?

The question was objected to by counsel for complainant.

The objection was sustained by the Master. To which ruling of the Master counsel for defendants then and there duly excepted.

383 Q. Who has charge of collecting the market reports under the new talk that you say you had with the President of the Board of Trade in August, 1900?
A. Who has charge of it?
Q. Of collecting the market reports?
A. As far as the technical end of it is concerned, seeing that it is done every day and that the men are there and are doing their work, I do.

Q. Who hires the men? A. I do in the same way.
Q. Who pays them? A. They are paid through our office.
Q. Whose office?
A. The office of the Cleveland Telegraph Company.
Q. Are all of the men connected with the gathering and sending out of market reports on the floor of the exchange room of the Board of Trade paid by the Cleveland Telegraph Company?
A. As far as handing them the money is concerned, yes. It is all done, however, as I said, for the Board of Trade.
Q. Did you say so? A. I think I said so.

The further hearing of said cause was here adjourned to 2:15 o'clock P. M. of this day.

November 20, 1900; 2:15 o'clock P. M.

Parties met pursuant to adjournment.

Present: Counsel for respective parties.

Frederick E. Crawford, having resumed the witness stand, was further cross-examined by Mr. Jenks, and testified as follows:

Q. I asked you, Mr. Crawford, this forenoon, who the President and Secretary of the Cleveland Telegraph Company were. You testified as to this paper, which is offered in evidence as exhibit 1, that that was the agreement made between the Board of Trade and the Cleveland Telegraph Company. Will you look at this paper and state if you know who wrote
384 the name of the Cleveland Telegraph Company there?
A. I don't know who wrote that. I know this. I don't know who wrote that. I don't know whether the President wrote those names or not.
Q. Did you see it written? A. No, sir.
Q. Did you see any part of this agreement signed by anybody? A. No, sir.
Q. Do you know George B. Solders? A. Yes, sir.
Q. Do you know whether he is President of the Cleveland Telegraph Company?
A. I don't know whether he is or not now.
Q. Do you know where he lives? A. Cleveland, Ohio.
Q. Do you know Allen A. O'Dell? A. I do.
Q. Do you know whether he was Secretary of that Company? A. He was.
Q. Do you know where he lives? A. Cleveland, Ohio.
Q. Does the Chicago & Milwaukee Telegraph Company pay to the Cleveland Telegraph Company anything on account of market reports? A. No sir.

Q. Who actually pays you and pays the men on the floor of the Exchange that are under your supervision and control, or the Cleveland Telegraph Company?

A. The Cleveland Telegraph Company pays me and pays the men under my supervision out of the earnings from its business. What I mean by saying it is for the Board of Trade, as I think my testimony shows here—it should show—is that the Cleveland Telegraph Company undertakes the work of collecting these quotations for the Board of Trade under an arrangement made with the Board of Trade by the Cleveland Telegraph Company.

On motion of counsel for defendants the latter part of the answer was stricken out by the Master as not responsive
385 to the question.

Mr. Jenks: I think, if the Master pleases, that this is all of the cross-examination of this witness, until we hear of the Judge of the Court in Cleveland as to those matters that are to be certified, and then I will want to ask Mr. Crawford a few more questions.

By Mr. Robbins:

Q. What else is paid out of the profits, out of the earnings of the Cleveland Telegraph Company?

The question was objected to by counsel for defendants as immaterial, incompetent and not re-direct examination.

The objection was sustained by the Master.

Q. Whose signature is this George B. Solders, President, if you know?

A. It is the signature of George B. Solders, in Cleveland, Ohio.

Q. I refer to the signature at the end of the contract, exhibit 1? A. The one I was looking at a moment ago, yes.

Q. Whose signature, whose writing is the Allen A. Odell, Secretary? A. I take it to be that of Mr. Odell.

By Mr. Jenks:

Q. Do you know whose it is?

A. I am familiar with his signature. I didn't see him sign that.

Q. Did you know this morning that Mr. Odell was Secretary of that company? A. I knew that he had been.

Q. Did you know this morning that Mr. Solders was President?

A. I knew that he had been. My recollection is that you asked me, who are the officers now.

Mr. Jenks: Well, until we hear from the Judge that is all, your Honor, with this witness.

Mr. Robbins: All right.

Nov. 20, 1901.

386 George F. Stone, produced as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Robbins:

Q. What is your name? A. George F. Stone.

Q. What is your connection with the complainant?

A. I am secretary of the Chicago Board of Trade.

Q. And how long have you been?

A. Since 1884—seventeen years.

Q. How many members has the Board of Trade or had at the time this suit was commenced? A. About 1800.

Q. Did it have any building in the city of Chicago?

A. Yes sir, it had.

Q. About what was the cost of that building?

A. Well, something about a million and one-half; a million to a million and one-half.

Q. What is the yearly cost of maintaining that building, and conducting the exchange?

A. Well, in the neighborhood of $230,000 to $240,000.

Q. is any of that money raised by yearly assessments upon members? A. Yes sir.

Q. About how much of it?

A. Well, I should say about $100,000.

Q. In a general way where does the balance come from?

The question was objected to by counsel for defendants as immaterial.

Mr. Robbins: I want to show a history of the way this Board is run.

The objection was sustained by the Master.

Q. What does this building consist of—describe it—what is it used for? A. What does it comprise?

Q. Yes.

A. Offices, business offices and exchange rooms, rooms
387 for the conduct and convenience of various committees of the Board, a Directors' room, Arbitration room.

Q. These offices that you speak of, who occupies them?

A. The members of the Board, firms represented in membership of the Board, parties who transact business on the floor of the Exchange.

Q. Are these offices leased to different persons?

A. Yes, sir.
Q. Of the character you have named? A. They are leased.
Q. At a yearly rental? A. A yearly rental.
Q. Well, what is a membership on that Board of Trade worth?
A. About twenty-six or seven hundred dollars, I believe, at present, about that.
Q. Is the Board of Trade admitting any new members from time to time? A. Yes sir.
Q. How frequently? A. I think every week.
Q. Are you present at the meetings of the Board of directors? A. Yes sir.
Q. Are questions of the admission of new members brought before the Board of Directors?

The question was objected to by counsel for defendants as incompetent and immaterial.
The objection was overruled by the Master.

A. Yes.
Q. What are the considerations or questions that are discussed by the Board of Directors at the time of the application of these new members?

The question was objected to by counsel for defendants as incompetent, irrelevant and immaterial.
The objection was overruled by the Master.

A. The membership committee report to the Board of Directors upon the applications that are made for member-
388 ship, and the Board of Directors vote upon the acceptance or rejection of that report.
Q. Well, when that is done, is there any discussion as to the members that are proposed?

The question was objected to by counsel for defendants upon the grounds last stated.
The objection was overruled by the Master.

A. Sometimes the membership committee will report concerning an application without definitely recommending the applicant for admission, but give the directors all the information that the committee has became possessed of, and then the Board of Directors in such case often discuss the various qualifications and facts that have been brought to their attention by the membership committee, and then vote, and if the [application] receives at least ten affirmative ballot votes, and not as many as three negative votes or ballots, he is approved by the Board of Directors.
Q. What are the qualifications that are discussed at those times?

The question was objected to by counsel for defendants as incompetent, irrelevant and immaterial.

The objection was overruled by the Master.

A. The qualifications for membership are stated generally in the rules, that any person of good character and so forth—I don't recall the exact phraseology, but any person of good character and receiving a certain number of affirmative ballot votes.

Mr. Robbins: In this connection I offer in evidence rule 10 of the Board of Trade. Do you need any more proof than that, Mr. Jenks?

Mr. Jenks: No, sir; I don't object to the rules of the Board. You can offer them all. The rules of the Board are the competent evidence and not the testimony of this witness upon this subject.

389 Mr. Robbins: Please read into the record rule 10 that you refer to.

A. "All applications for membership in the Association shall be referred to the Committee on membership, who shall hold regular stated meetings for examining such applicants and their sponsors, in person, under such rules and regulations as may be made by the Board of Directors. Any male person of good character and credit, and of legal age, on presenting a written application indorsed by two members, and stating the name and business avocation of the applicant, after ten days notice of such application shall have been posted on the bulletin of the Exchange, may be admitted to membership upon approval by at least ten affirmative ballot votes of the Board of Directors—provided that three negative ballot votes are not cast against such applicant; and upon payment of an initiation fee of ten thousand dollars, or upon presentation of an unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the rules, regulations, and by-laws of the Association and all amendments that may be made thereto."

Q. In this building is there an exchange hall? A. Yes sir.

Q. Do you recall its dimensions?

A. Well, it is in the neighborhood of, I think 140 by 180—160 or 180 feet.

Q. Is that exchange floor open to the public generally?

A. No sir.

Q. What steps, if any, are taken by the Board of Trade [—]respect to persons going into that room?

A. Admissions are only permitted by showing to the doorkeepers of the hall a ticket of admission.

Q. Are those tickets issued to all members?

A. Yes sir; upon payment of their dues.

Q. Yes, all members whose dues are paid?

A. Yes, sir.

390 Q. And to whom else do these tickets go?

A. Those tickets go to persons who are introduced by members of the Board, reputable members.

Q. Visitors?

A. Visitors and to certain clerks that the room committee approve.

Q. Telegraph operators and persons of that kind?

A. Telegraph operators and telegraph messengers.

Q. Is anybody allowed to go upon the floor, except persons having these tickets?

A. No sir; no person except by presenting a ticket of some kind which is recognized as an official ticket by the doorkeeper.

Q. What are the market hours of the Chicago Board of Trade?

A. From 9:30 in the morning until 1:15 in the afternoon, excepting on Saturday, when the exchange closes at twelve o'clock.

Q. Now, is there any trading allowed in the exchange hall, except between those hours?

A. No trading except between those hours. That is governed by rule 10 of the Rules of the Board defining the regular hours for trading.

Q. Mr. Stone, do you know how the Chicago Board of Trade stands in respect to its size as an exchange, with the other exchanges of the country in dealing in grain and pork products?

The question was objected to by counsel for defendants as incompetent, irrelevant and immaterial.

The objection was overruled by the Master.

A. There is more business transacted in the exchange room of the Board of Trade of the City of Chicago than in an other commercial organization in the country.

Q. What do you mean by commercial organization?

391 A. Any similar organization, any exchange, Board of Trade.

Q. Do you mean any exchange on which dealing in grain or food products is carried on?

A. Yes sir; grain and provisions—dealing in like articles.

Mr. Robbins: I offer in evidence the original contract between the Board of Trade and the Big Telegraph Company.

Mr. Jenks: Is the one you offered yesterday?

Mr. Robbins: No, that is printed—a copy of it is printed in the bill.

Mr. Jenks: I object to the introduction of this paper, called a contract, between the Board of Trade of the City of Chicago and the Big Telegraph Companies for the reason that neither company that signed this paper had any right, power, or authority, under its charter, to enter into any such agreement. And that the Board of Trade of the City of Chicago had no power or authority under its charter to enter into the kind of business or conduct the same, or to enter into the kind of an agreement that this is, and for the reason that if entered into, it was absolutely ultra vires the powers of each, every and all these corporations.

The Master: Overruled.

Said document was admitted in evidence, and marked as complainant's Exhibit 5 of November 20, 1901.

The Master: You wish to substitute a copy of that, I presume.

Mr. Robbins: Yes, there is no use of emcumbering the record with it, is there?

Mr. Jenks: Take your own course. I don't care about that.

Mr. Robbins: It is already in the bill.

Mr. Jenks: I say, take your own course. I don't care about that. Suit yourself.

392 Mr. Robbins: Well, subject to verification, and you willing that the copy in the bill should be regarded as the copy of this.

Mr. Jenks: I suppose it is correct.

Mr. Robbins: Well, we will give you a chance to verify it, if you want to. Are you willing to stipulate—

Mr. Jenks: Certainly, I don't care; that that is the copy of what is in the bill—if that is the copy; that is all right; you need not put it in here.

Mr. Robbins: Then it is agreed between counsel that a true copy of the contract now offered in evidence is set out in the bill of complaint herein, and that the original contract need not be annexed to the deposition; but counsel undertakes to produce it upon trial, if defendants' counsel desire.

Mr. Jenks: It is not so agreed between counsel, as I understand it. It is agreed, just as I stated it, that I suppose a copy is attached to the bill—I suppose that is a true copy—and the counsel need not, unless he wants to, put that contract into this record again.

Mr. Robbins: All right.

Q. Mr. Stone, has the Board of Trade made any contracts with any Telegraph Companies for the distribution or sale of its quotations, other than the contract just referred to and the contracts between the Cleveland Telegraph Company and

the Board of Trade, and the Milwaukee Telegraph Company and the Board of Trade, Exhibits 1 and 2 in this evidence?

The question was objected to by counsel for defendant, as incompetent and immaterial.

The objection was overruled by the Master.

A. No, sir; I think not.

Q. What? A. I think not.

393 Cross-Examination

By Mr. Jenks:

Q. Mr Stone, you say that the Board of Trade of the City of Chicago owns the building. Does it also own the ground upon which the building stands? A. Yes, sir.

Q. You say that the building cost about a million and one-half of money? A. Yes, sir.

Q. Do you include in that that cost of the ground?

A. No, sir.

Q. Do you take the building and the ground—that is the value of it at the present time? A. I don't know.

Q. How much did it cost? A. I could not say.

Q. Why, you have testified as to what the building cost?

A. Yes.

Q. Don't you know how much the ground cost?

A. No, I don't. The cost of the building has come up so frequently from time to time that I had no hesitation in answering such a question, but I don't recall that I have ever been asked in regard to the cost of the ground.

Q. Haven't you any idea as to the value of the ground?

A. Well, I have an idea that it is valuable; but I haven't an idea sufficiently definate to state the amount of its value. I have not had my attention called to that matter particularly.

Q. Do you know the dimensions of that building?

A. Well, not exactly.

Q. Approximately?

A. Approximately, I think it is somewhere in the neighborhood of 140 feet by 200 feet, or in that neighborhood. That is as close an approximation as I could state.

Q. Those are the dimensions on the ground? A. Yes.

Q. What is the height of the building? A. I don't know.

Q. In stories?

A. In stories, well, seven, I think; seven stories high.

394 I have never been above the 7th story; I think that is the highest story.

Q. And it is situated where?

A. It is situated fronting LaSalle street and on Jackson Boulevard, between Sherman street and Pacific Avenue.

Q. In the city of Chicago? A. In the city of Chicago.

Q. How [may] offices are there rented out to different people for hire? A. I don't know the number of offices.

Q. About how many?

A. Well, my opinion is merely that there are about 100 offices.

Q. And all of them occupied by people paying rent?

A. All except those offices and rooms occupied by the Board itself.

Q. Then you didn't understand my former question, which was, how many offices or rooms there are there rented out.

A. Oh, rented out—Well, I did understand that, Mr. Jenks, and intended to say that about 100 offices in that vicinity, were rented, and rent received from them, I think.

Q. Is the rent received from those offices received by the Board of Trade? A. Yes, sir.

Q. What is the amount received per year for rents?

A. About $100,000.

Q. You say the membership of the Board of Trade at the present time is about eighteen hundred? A. Yes, sir.

Q. How many active members are included in the eighteen hundred? I mean by that, members who do business on the Board? A. I don't know.

Q. Can you make an estimate?

A. No, I couldn't make any estimate that would be my absolute knowledge.

Q. Does the number exceed 500 of active members?

395 A. I should think so; I should think so.

Q. Is it true, Mr. Stone, that any person of good character can become a member of the Board upon application, unless he subscribed to the rules, in accordance with rule 10 of the Board?

A. To learn a lesson from you, I should think it was not the Secretary's province to interpret the rule. The rule will speak for itself.

Q. I thought you testified in answer to Mr. Robbins that any person of good character could become a member?

A. I said any person of good character, under the conditions and phraseology of rule 10—afterwards Mr. Robbins referred to Rule 10.

A. And however good his character might be, he would not be admitted as a member, unless he subscribed to those rules, would he, as a matter of practice there?

A. He would be admitted altogether under the conditions of that rule.

Q. And if he did not comply with the conditions of the rule, would he be admitted? Answer yes or no if you please.

A. No, he would not be admitted unless he complied with the conditions of the rule.

Q. Mr. Stone, can a man be admitted to an absolutely new membership in the Board without being required to pay the sum of $10,000 as an initiation fee?

A. I will answer that by referring to the rule, Mr. Jenks.

Q. That is what the rule provides, the ones that you read into the record. I want to know as a matter of fact now whether a man can get in there without paying that $10,000 as an absolutely new member?

A. No man can get into the Board without complying with the conditions and provisions of rule 10. He is admitted
396 under the provisions, conditions and the requirements of rule 10.

Q. What did you mean when you said in your direct examination that the membership was worth twenty-six to twenty-seven hundred dollars?

A. I mean that the membership, privilege of membership was purchasable from some member at about that figure.

Q. If an intended applicant could find a member who wanted to sell his membership ticket—that is what you mean?

A. Yes.

Q. Do you know of anybody who ever did pay $10,000 to become a member of the Chicago Board of Trade?

A. No, I don't.

Q. The Chicago Board of Trade has issued no absolutely new memberships since the rule provided that $10,000 should be the initiation fee—is that correct? A. That is correct.

Q. The membership is now no larger than it was previous to the time that rule was adopted—is that correct?

A. That is correct.

Q. Can you tell us when that rule was adopted—

A. I cannot.

Q. —fixing the initiation fee at $10,000?

A. I cannot. I can't tell the date of that.

Q. In the admission of members to the Board of Trade, who passes upon the question as to whether the applicant is a man of good character?

A. The procedure is adhered to as laid down in rule 10.

Q. Please answer the question. Who are the persons who pass upon the question of the applicant's good character?

A. I explained that fully, I think.

Q. Never mind that[—]I will do it over again.

Q. Just tell me who the persons are.

A. Well, let me think. The applicant—the application is reported upon by a committee on memberships to the
397 Board of Directors.

Q. Who compose the committee?

A. It is composed of members of the directors.

Q. How many? A. Three.

Q. Who are they—who were they in 1900?

A. I don't recall the names in 1900. I could find out for you, but I don't know now who they were, what their names were.

Q. Do the members of that committee really pass upon the application, or do some boys, designated for that purpose, pass upon the application?

A. The members of that committee report upon the application to the Board of Directors.

Q. Mr. Stone, I have been there myself; I was a member of the Board once myself, and I went through an examination. Now, I know who the three persons were who examined me. Now, I want to know whether generally, in applications for membership, the persons named as the committee on membership make the examination, and pass upon the application, or whether they designate some young men or boys to make that examination?

A. Oh, they themselves make the examination of the applicant.

Q. In every instance? A. In every instance, and report.

Q. And after they make the report to the Board of Directors does the Board of Directors ever, upon any application, send for the applicant and ask him any questions?

A. Yes, sir.

Q. Are you present at the meetings of the Board of Directors at the time they act upon the question of membership, the admission of new members? A. Yes, sir; generally.

Q. Always present? A. Generally.

Q. Do you keep a record of that action?

A. Yes, sir.

398 Q. Whether the applicant is admitted or refused, you keep record of it?

A. Whether the application is approved or otherwise?

Q. Yes, do you keep a record of that?

A. The question is of the approval of the Board of Directors, yes.

Q. Yes, do you also keep a record of the report of the committee on membership? A. Yes, sir.

Q. You have all of those now in your office that have been made for the past ten years?

A. Why, yes, we have a report of every meeting of the Board of Directors for ten years.

Q. Mr. Stone, to lay aside the feeling of importance that a man gets from being a resident of this city, do you think more business is done upon the Chicago Board of Trade than upon the New York Stock Exchange?

A. My comparison was with exchanges where the members deal in the same articles, the same kind of articles, food, grain and provisions, Mr. Jenks. I don't compare it with stock exchanges.

Q. Now, grain and provisions, you limit it to that.

A. Well, such as the commodities as are dealt in by the members of the Chicago Board of Trade.

Q. And those are what?

A. Well, those are generally speaking, grain and provisions, grass seeds and hay and things, articles of that sort, that come from agricultural regions.

Q. I want to know just exactly what they are. Do they deal in May or on the Board of Trade?

A. Yes, sir; they deal in May flax-seed, timothy seed, clover seed, Hungarian seed, millett, short-ribs, lard, pork, beef
399 products, barley, rye, oats, corn, wheat and buck-wheat, and I don't recall any other articles. There may be some other articles.

Q. They don't deal in stocks and bonds? A. No, sir.

Q. Do they deal in cotton? A. No sir.

Q. For how long a time has the Chicago Board of Trade been such an important chamber of commerce in this country?

A. Well, it has been such an important chamber of commerce for several years, for many years—I don't precisely remember how many, but ever since I have known anything about it, I have known that it was an exchange whose members dealt more largely and extensively in grain, provisions and so forth, such as I have mentioned, than the members of any other similar exchange, any other exchange in this country, as far as I know.

Q. Covering what territory, landed territory, in the United States, are the products dealt in on the Chicago Board of Trade from?

A. Well, they comprise shipments and consignments from Minnesota, Wisconsin, Iowa, North and South Dakota, Kansas, Missouri, Indiana, Illinois, Ohio and indeed all the agricultural, the great agricultural regions of the country, the Mississippi valley. The State of Illinois contributes a great deal of business, raising a crop of about 300,000,000 bushels of corn. The State of Iowa is very important, a large volume of business comes from—

Q. Confine yourself to the territory and not to the volume of business.

A. Well, in a general way I think I have covered the territory—Michigan—I had forgotten Michigan. Michigan sells a great deal of stuff here.

Q. How about Texas?

A. Texas is a large corn state, and it is a big state too.

400 Q. No, but as to products here. Now, you have not gotten beyond the Missouri river, I think. Is there any territory beyond the Missouri river that contributes to this Chamber of Commerce, or Board of Trade?

A. Well, I couldn't say. I couldn't undertake to give you the extent of territory which contributes to the Board of Trade, because I don't know.

Q. Have you any way to judge, Mr. Stone, speaking of the importance of this Board of Trade, as to what proportion of the entire productions of the Northwest are bought and sold on the Board of Trade of Chicago?

A. No, I couldn't say what proportion of the products are shipped to any market. A great many of them are kept at home and consumed at home, and I couldn't say what proportion of those that are shipped from the points and territory of production are consigned to Chicago, but a large, undoubtedly a very large volume, because Chicago received last year 350,000,000 bushels of grain, and that must have given rise to a good deal of business in a great many ways, all the way from the points of production, feeding industries of countless number and variety, until they arrived in Chicago and then shipped to various parts of the East and of the world, setting in motion a vast amount of business and mercantile activity all over the world, feeding transportation lines, lake navigation, establishing banks, insurance offices, warehouses and all things that are incident and necessary to marketing immense products, the shipment of grain a provisions sent to this market and all handled under the rules, regulations and restrictions of a legitimate character that are established by the Board of Trade of the City of Chicago.

401 Redirect Examination

By Mr. Robbins:

Q. Mr. Stone, can you tell while you are there, what the receipts in Chicago for the last year were in corn?

A. In what?

Q. Corn?

A. Oh, about 100,000,000 bushels or more. We shipped out of Chicago about 2,100,000,000 pounds of lard and any quantity of beef products, and received 14,000,000 of animals—nine millions of hogs—and we kept pretty busy and kept all of the facilities for carrying on business going pretty lively from January to January.

Q. Where are these quantities of grain and food products bought and sold in Chicago?

A. On the Chicago Board of Trade, between 9:30 and 1:15, under the rules of the Board of Trade during its regular hours; during the regular hours for trading.

Q. How many pits are there on the floor of the exchange?

A. You mean circles for trading, where they trade?
Q. Yes. A. Three.
Q. How many sample tables are there on the floor of the Exchange? A. Oh, approximately, fifty or sixty.
Q. How many firms occupy a table?
A. Four, generally; generally four. Sometimes one firm will occupy more than one square. They are divided into quarters.
Q. How are these transactions, these trades, made between members on the Board floor?
A. What trades, Mr. Robbins—you referred to sample tables.
Mr. Jenks: He refers to futures.

Mr. Robbins: No, I mean as to whether they are by open bidding or how?
A. Well, I am not on the floor; I could not testify about those customs on the floor.

402 Recross-Examination

By Mr. Jenks:

Q. Mr. Stone, do you keep a record of the receipts and shipments of grains of different kinds and provisions, received and shipped outside of Chicago? A. Yes, sir.
Q. In what do you keep that record?
A. Keep that in the books that are specially provided and adapted for the systematic record of receipts and shipments.
Q. What do you call those books?
A. We call one of them which contains the records of receipts "Receipts"—just simply "Receipts" I think the outside of the book is; and the other book is named "Shipments".
Q. You get out, as Secretary of the Board, every year a report, and in that report is contained the receipts and shipments in and from Chicago. What do you call that book?
A. I call that book the annual report.
Q. When was that book issued for the year 1900?
A. Well, I don't know.
Q. Is it issued yet?
A. Yes, sir; it was issued early in 1900.
Q. I mean for transactions during the year 1900.
A. Yes, that book is issued; issued in 1901, early in 1901.
Q. Yes. Does that book contain your name in any way?
A. Yes, sir.
Q. That book is called what? A. The annual report.
Q. Are the reports therein contained as to grain and provisions and commodities dealt in on the Chicago Board of Trade the correct as to facts? A. Yes, sir.

Q. Will you be good enough to let me have one of those books? A. With pleasure.

403 Q. What proportion of the receipts of commodities in Chicago have come here by means of transactions on the Chicago Board of Trade?

A. I think that all of the receipts of grain and provisions come here as the result of the members' enterprise in carrying on the business of the members of the Board.

Q. I think you still don't understand what I am getting at and I think I didn't get my question just exactly right. Are all of the grains and provisions that come here bought and sold on the Chicago Board of Trade?

A. Yes, sir; substantially all.

Q. And all of the receipts of commodities dealt in on the Board of Trade received in Chicago and shipped from Chicago, are bought and sold on the Chicago Board of Trade?

A. Read that last question.

Q. (Read by the reporter.)

A. Yes, I think so.

Mr. Robbins: (Q.) Mr. Stone, has any other telegraph company applied to the Chicago Board of Trade for quotations other than the four that have signed these contracts? A. No, sir.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled by the Master.

James F. Morgan, produced as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Robbins:

Q. What is your name? A. James F. Morgan.

Q. What is your connection with the Western Union Telegraph Company?

404 A. Chief Clerk, under Col. R. C. Claughry, Vice-President and General Superintendent.

Q. How long have you occupied that position?

A. About six years.

Q. Do you, in that position have to do with the distribution by the Western Union Telegraph Company of the quotations for the Chicago Board of Trade?

A. Yes, sir; I have general supervision of that service.

Q. Covering the entire country? A. Yes, sir.

Q. Has the Western Union Telegraph Company, since August 1st, 1900, furnished the quotations of the Chicago Board of Trade to the O'Dell Commission Company, W. J. O'Dell, George H. Stapely or John Maxwell, of the City of Cincinnati?

The question was objected to by counsel for defendants as leading, irrelevant and incompetent.

The objection was overruled by the Master.

A. I believe not; certainly not to my knowledge.

Q. Should you know it if you were furnishing those quotations? A. I think so, I ought to know it.

&

Q. Explain the relation of the Gold Stock Telegraph Company to the Western Union Telegraph Company.

A. This Gold & Stock Telegraph Company is a company leased by the Western Union.

Q. Under what name does the Western Union conduct this quotation service?

A. Under the name of the Gold & Stock Telegraph Company.

Q. Is that true in the City of Cincinnati? A. Yes, sir.

Q. When you say the Western Union Telegraph Company has not since August furnished Board of Trade quotations to these parties, does your action also cover the action of the Gold & Stock Telegraph Company?

405 A. Yes, sir; I understand your question to be in regard to continuous quotations.

Q. Continuous quotations? Yes.

A. Yes, sir; I think you said that.

Q. Under what circumstances are you furnishing quotations to customers, the quotations of the Chicago Board of Trade to customers? I mean by that continuous quotations.

The question was objected to as incompetent, irrelevant and immaterial, and as covering a time subsequent to the filing of the bill of complaint herein.

The Master: The last objection is well taken, in reference to the time. Confine it to at, and prior to the time of filing the bill.

Mr. Robbins: I wish you would let this witness testify—if I may withdraw this question—Supposing the ruling comes back tomorrow morning that I have a right to that, couldn't it go in, subject to the motion to strike it out?

Mr. Jenks: I object to its going in [—] that way. I think it is about time to insist that you confine your proof to the allegations of the bill.

The Master: I think you will have to keep everything subsequent out until the Judge rules on the question.

Mr. Robbins: Answer that question, confining your answer to a period prior to June 15, 1901.

A. Well, there should be a period or time of commencement.

Q. August 1st, 1900.

A. Well, of course from August 1st, 1900, for some time quotations were discontinued entirely, and since the contract between the Board of Trade and the Western Union
406 Telegraph Company was made in April, we have required all parties desiring the continuous quotations of the Chicago Board of Trade market to sign an application, stating the use to be made of the quotations desired.

Q. Is that application set out in the contract?

A. Yes, sir.

Q. Between the Western Union and Postal Telegraph and the Board of Trade, dated, April 15—and the Board of Trade?

A. Yes, sir.

Q. Go on.

A. Such application, when signed by the party desiring the quotations, has been sent to the Chicago Board of Trade for consideration and approved or rejected by that body.

Q. As required by this contract? A. Yes, sir.

Q. I mean, under this contract?

The question was objected to by counsel for defendants as having been previously answered.

Q. Now, beginning with the time that the distribution of those continuous quotations was resumed by your companies, up to and including the 15th day of June, 1901, was any person, firm or corporation furnished by the Western Union Telegraph Company or the Gold & Stock Telegraph Company, or any other subsidiary company of the Western Union Telegraph Company, these quotations, without such person had first signed an application in the form set out in this contract?

The question was objected to by counsel for defendants as incompetent, irrelevant and immaterial.

The objection was overruled by the Master.

A. I believe not;—certainly not to my knowledge.

Q. Has the Western Union Telegraph Company, or any of the subsidiary companies, at any time since April 1st,
407 1900, furnished these continuous quotations—

A. 1900?

Q. —1901, furnished these continuous quotations to any person who had not signed such an application?

The question was objected to by counsel for defendants as incompetent, irrelevant and immaterial.

The objection was overruled by the Master.

A. No, sir.

Q. Has the Western Union Telegraph Company or any subsidiary company operating in the State of Ohio, except the Gold & Stock Telegraph Company? A. No, sir.

Q. I mean by a subsidiary company, such companies as are referred to in this clause 8 of this contract?

Mr. Jenks: I object to the question. Clause 8 of the contract means nothing in this question.

The Master: Can this gentleman tell on examining clause 8 just what companies he has in mind? If so, he can state the companies, and then answer.

A. Well, my answer will probably be the same regardless of this clause. (Referring to said clause.) The answer is the same.

Cross-Examination

By Mr. Jenks:

Q. Mr. Morgan, how long have you been chief clerk for Col. Claughry, Vice-President of the Western Union Telegraph Company? A. About six years.

Q. How long have you been connected with the Western Union Telegraph Company?

A. Let's see, it is about fifteen years.

Q. How long has the Western Union Telegraph Company been sending out market reports from the Chicago Board of Trade? A. I don't remember.

Q. In other words, you don't know?

408 A. I don't have it in my mind.

Q. Well, you know that it sent them out at the time you first became connected with the telegraph company, don't you?

The question was objected to by counsel for complainant as not proper cross-examination.

The objection was sustained by the Master.

Q. Where did the Western Union Telegraph Company get any market reports during 1900?

The question was objected to by counsel for complainant.

The objection was sustained by the Master.

Q. Mr. Morgan, didn't the Western Union Telegraph Company send out any market reports before April, 1901?

The question was objected to by counsel for complainant.

The objection was overruled by the Master.

A. The question is a very broad one.

(The question was withdrawn.)

Q. After August, 1900, where did the Western Union Telegraph Company get any market reports from the Board of Trade of the City of Chicago?

A. Between August 1, 1900, and April, 1901 it didn't have quotations from the Chicago Board of Trade.

Q. At all? A. Not at all.

Q. What was your position with that company during that time?

A. Chief Clerk to the Vice-President and General Superintendent.

Q. Had you anything to do with the market reports at that time? A. The same as I have now.

Q. Have you anything to do with them now?

A. Yes, sir.

Q. What?

A. I handle all matters of detail in the General Superintendent's office.

409 Q. And who handles the market reports?

A. A number of people.

Q. Who are they—what do you designate them as?

A. Well, we have operators, and—

Q. Do you know where those operators get market reports to transmit over the wires of the company? A. Now?

Q. Where they got them in April, 1901?

A. They got them from the Board of Trade.

Q. Directly from the corporation Board of Trade of the City of Chicago? A. Yes, sir.

Q. Is that what you mean to say? A. Yes, sir.

Q. Who gave them to you? A. The Board of Trade.

Q. Where did you get them?

A. From the trading floor of the Board of Trade.

Q. Did you gather them yourself? A. Personally?

Q. Yes? A. No, sir.

Q. Did the Western Union Telegraph Company gather them? A. Not since April, 1901.

Q. Did it in August, 1900?

A. Not after some time during the summer of 1900.

Q. Since April, 1901, has the Western Union Telegraph Company had a wire running to the Exchange room of the Board of Trade?

The question was objected to by counsel for complainant as not cross-examination.

The objection was overruled by the Master.

A. Yes, sir.

Q. Who has operated that wire for the transmission of messages?

A. Well, operated what part of it. We operated one part of it.

Q. Do you know what I said?

A. Yes, sir. There are two parties to the operation.

410 That is why I asked you.

Q. I asked you if the Western Union Telegraph Company had a wire running to the Exchange room of the Chicago Board of Trade since April, 1901. You say yes? A. Yes.

Q. Is that wire there for the purpose of transmitting market reports? A. Yes, sir.

Q. Are market reports transmitted on that wire?

A. To the best of my knowledge and belief they are, yes, sir.

Q. Who transmits them?

A. The parties engaged for that purpose by the Chicago Board of Trade.

Q. Who are they? A. I do not know them personally.

Q. How do you know that they are engaged by the Chicago Board of Trade?

A. Because that was the arrangement between the Board of Trade and the Telegraph Company.

Q. Is that the only way you know it? A. Yes, sir.

Q. Do you lease that wire to anybody? A. No, sir.

Q. Mr. Morgan, do you know all about that wire?

A. No, I never saw it.

Q. Do you know anything about it?

A. I know what I have said is the understanding with our people.

Q. That is not what I have asked you that? A. That—

Q. I asked you who operates that wire?

A. Then, I will say I don't know.

Q. And that is the only way, if you don't know. What instruments are attached to that wire—

A. I know very little, if you take that view of it.

Q. —in the Exchange Room of the Board of Trade?

A. I don't know.

Q. Did you ever know?

411 A. Only by hearsay, if you are confining me to my knowledge now.

Q. Do you know of your own knowledge that there is any wire in there? A. No, sir.

Q. Were you ever in there yourself? A. In where?

Q. In the Exchange room of the Board of Trade?

A. Yes, sir.

Q. When? A. Well, I have forgotten the time.

Q. Within two years? A. I don't remember.

Q. Within ten years? A. Yes, sir.

Q. Within five years? A. I don't remember.

Q. Within one year?
A. I don't remember. I don't think so.
Q. You don't think so. Do you know the corporation that is called the Cleveland Telegraph Company?

The question was objected to by counsel for complainant as not cross-examination.

A. I have heard the name.

Mr. Robbins: I want a ruling on the objection. These cross-examinations are long enough, and filling this record up enough without—

The Master: That may be overruled—objection overruled.

Mr. Jenks: (Q) Does the Western Union Telegraph Company get market reports of the transactions of the Chicago Board of Trade from the Cleveland Telegraph Company?

The question was objected to by counsel for complainant as not cross-examination.

The objection was overruled by the Master.

A. I do not know of my own knowledge.
Q. Do you know of anybody's else knowledge? Do you?

The question was objected to by counsel for complainant; the objection was sustained by the Master.

412 Q. Does the Western Union Telegraph Company get market reports of transactions on the Chicago Board of Trade from the Chicago or Milwaukee Telegraph Company?

The question was objected to by counsel for complainant as not cross-examination. The objection was overruled by the Master.

A. Not that I know of.
Q. Do you know anything about it?
A. I know that I don't know that they do.
Q. Does the line of wire of the Western Union Telegraph Company run to Cleveland, in the State of Ohio?
A. My understanding of our business is that we have wires running to Cleveland, Ohio; yes, sir.
Q. But you don't know?
A. No, because I can't do all the parts of the work of the Western Union myself personally.
Q. Well, you started out here with a very good notion of the business yourself, because you are the chief clerk of Claugh.ry, Vice-President?
A. I testified to what appears on the records.
Q. Are you testifying from records? A. I don't think so.

Q. You are not testifying from your own knowledge?
A. No, sir.

Counsel for defendants here moved to strike out the entire testimony of this witness. The Master allowed the testimony to stand, subject to motion.

Q. Where are those records?
A. In the office of the Vice-President and General Superintendent.
Q. When did you examine them?
A. Well, I have occasion to examine them on various points frequently—at no particular time.
Q. With reference to your testimony here today, when did you examine them?
413 A. I examined them today in regard to the service to the parties named.
Q. What parties named?
A. W. J. O'Dell, the O'Dell Commission Company, and the others.
Q. What others?
A. I looked up the name of George H. Stapely and one other party.
Q. Who? A. I have forgotten his name now.
Q. Who asked you to look them up as to that?
A. An inquiry was made of me.
Q. Who asked you—the question is? A. Mr. Robbins.
Q. And you looked because he asked you? A. Yes, sir.
Q. What else did he ask you to look for in the records?
A. I don't recall. He told me by 'phone that I was subpoenaed to come over here. I haven't seen the subpoena.
Q. You haven't seen it? A. No.
Q. He told you a whopper then, didn't he?
A. I am here and I want to know how much further I am to go in this matter.
Q. Just as far as you know.
A. Well, I am telling the facts as—
Q. Did you ever see that paper before?
A. I think so, yes, sir.
Q. When did you first see it? A. I don't remember.
Q. When do you think you first saw it?
A. Oh, I have no means of "thinking" when I first saw it.
Q. Did you see it for the first time today?
A. You asked me if I had ever seen it before?
Q. Before today? A. Yes, sir.
Q. When?
A. Sometime near the time when it was signed by our company.

Q. When was it signed?
A. It bears the date of April 15, 1901.
Q. That's all right. I didn't ask you that question.
414 When was it signed? A. I don't know.
Q. But you saw it then? A. What?
Q. Did you see it then? A. That is my belief.
Q. Did you read it? A. I think so.
Q. Have you ever read it since? A. Since when?
Q. Since you first read it? A. I don't know.
Q. Since you first saw it? A. I don't remember.
Q. Did you read it then? A. I think so.
Q. Do you think you know the contents of it?
A. So far as I can tell at a glance at it. You ask me about a thing that has a whole lot of words in it, but of course I have not read all those words through, but so far as I can tell from the surface itself, yes, I saw and read it all. It may have been changed since I read it, or filled with interlineations.
Q. Do you know whether it has been changed or not?
A. I don't know.
Q. When you testified that you furnished market reports under the provisions of this agreement, what did you mean, if you do not know what the agreement is?
A. Well, I suppose I can qualify every answer by saying I don't know anything.
Q. Well, I think that would be perhaps accurate, wouldn't it? A. Well, that is about the answer you would want.
Q. No, it isn't what I want.

Mr. Jenks: Mr. Reporter, this paper called an agreement which I am referring to, is marked Complainant's Exhibit 5 in this case.

Q. Now, Mr. Morgan, did you ever talk with Mr. Robbins, the Complainant's solicitor here, about your testimony in
415 this case, except today over the telephone?
A. Not that I remember.
Q. Does the Western Union Telegraph Company furnish Chicago market reports to anybody in Cincinnati?
A. Well, going on the same basis that you just spoke about, a moment ago, I don't know.
Q. Then you don't know but that the Western Union Telegraph Company furnishes everybody in Cincinnati with market reports do you?
A. I don't know from my personal knowledge, no sir. At the outset, I said to the best of my knowledge and belief they did not serve them.
Q. But you do not know whether they do or not?
Q. No, sir; how can I know. I am not there.

Q. Well, I thought you couldn't know. Now, as a matter of fact you are willing to swear that you don't know who are furnished market reports in Cincinnati by the Western Union Telegraph Company; that is a fact, isn't it—is not that a fact?

A. I say I don't know, for I can't know.

Q. Now, you can't know? A. Not positively.

Q. Does the Western Union Telegraph Company to your knowledge have any tickers in Cincinnati?

A. To the best of my belief we have tickers there. I don't know—not having been there.

Q. To the best of your belief, how many tickers do you have there?

A. I don't recall the number; I never fixed it in my mind.

Q. More than two? A. I don't know.

Q. More than one? A. I think so.

Q. More than two? A. I said that I did not know.

Q. Do you know whether the Western Union Telegraph Company has any tickers in the City of Chicago?

A. Not from personal knowledge.

416 Q. Do you know whether the Western Union Telegraph Company sends out market reports from the Board of Trade of the City of Chicago?

A. You mean send them from the Board of Trade or send reports of the Board of Trade markets?

Q. Board of Trade reports of the markets?

A. We are supposed to do so.

Q. Do you do so?

A. I don't do it myself, and do not watch them being sent and therefore, I can't say positively.

Q. You don't know whether they do or not—is that right?

A. (No response by the witness.)

Q. Do you know anybody connected with the Cleveland Telegraph Company?

The question was objected to by counsel for complainant as not cross-examination. The objection was overruled by the Master.

A. Not positively. I am acquainted with Mr. Crawford who is said to be connected with it.

Q. Did you ever have any talk with him about these market reports? A. I don't recall any conversation about them.

Q. Does the Western Union Telegraph Company pay anybody for market reports?

A. I believe they pay the Chicago Board of Trade.

Q. To your own knowledge? A. No, sir.

Q. Now, I will ask you a question which perhaps you will know something about. Do you know whether the Western

Union Telegrah Company, operating in the City of Chicago is a public telegraph company?

A. What do you mean by public telegraph company?

417 Q. Transmitting messages from the public generally as they are left in the offices of the company?

A. It has that reputation.

Q. Well, is that a true reputation?

A. I believe it is.

Q. But you don't know?

A. Oh, about as well as we can know anything, I guess.

Redirect Examination

By Mr. Robbins:

Q. Mr. Morgan, do you keep in Chicago a record containing the names of all persons that are furnished the continuous quotations of the Chicago Board of Trade by the Western Union Telegraph Company and any of its subsidiary companies?

A. Yes, sir.

Q. Is that the record that you spoke of as having looked at today? A. Yes, sir.

Q. For what purpose did you look at that record today?

A. You asked me to come over here and give about the same testimony as in previous cases, indicating whether the quotations were furnished to certain named parties.

Q. Now, did you look on this record before coming here to see whether those parties' names were upon the list of the persons receiving the quotations from your companies?

A. Yes, sir.

Q. Did you find their names on those records?

The question was objected to by counsel for defendants on the ground that the record is the best evidence.

The objection was sustained by the Master.

Q. Would the applications of those parties for quotations come through your hands?

The question was objected to by counsel for defendants on the ground that the applications referred to would have nothing to do with this case.

The objection was overruled by the Master.

418 A. That is the mode of procedure in our office, and in one case there was an application received and sent to the Board of Trade.

Q. In what case was that?

Mr. Jenks: I move to strike out that part of the answer as not responsive to the question.

The Master: Stricken out.

Mr. Robbins: (Q) Was there in one case—either of those cases an application received by your telegraph company for the continuous quotations?

The question was objected to by counsel for the defendants as incompetent and immaterial.

The Master: I don't see the relevancy of that question.
Mr. Robbins: Isn't it relevant to find out whether there was an application made by the O'Dell Company?
The Master: That is not your question.
Mr. Jenks: What parties?
Mr. Robbins: The four parties that he has named.
The Master: If you will make your question definite, he may answer it.
Mr. Robbins: Well, that is what I mean; that is what the witness says. I took the language from his mouth on that.

Q. Did your companies receive an application from the O'Dell Commission Company for the continuous quotations of the Chicago Board of Trade?

Mr. Jenks: I object to the witness answering anything about it, unless it is in writing, that he received the writing, because the rest of it would be merely his conclusion as to whether it was an application or not, and then when they get to the writing, I will object to his testifying anything
419 about it. We will have the writing, and then we will tell whether it is an application or not.

Mr. Robbins: Answer the question.

The Master: If you know whether they received an application, you may answer it, if you know.
A. Well, I think we received a written application, but I would not swear positively to it now, for it was sometime ago; but the record shows that we did receive a written application.

Mr. Robbins: (Q) Now, what did you do with it?
A. Sent it to Board of Trade.
Q. What next occurred?
A. They disapproved of the service to the applicant.
Q. And what did you do?
A. Well, so far as I recollect—I am not certain, but that is the usual way of handling it—wrote back—

Mr. Jenks: I object unless you know what you did.
Mr. Robbins: Answer please. Finish your answer.

The Master: If you can recall, from your recollection, state what you did.

A. Well, following our usual custom, notified the superintendent through whom the application came, and he may or may not have notified the applicant. He probably did.

Mr. Robbins: (Q) Now, have you received any subsequent applications from the O'Dell Commission Company, that you know of? A. I don't recall any.

Q. Do you recall having received any application from either of the other parties; W. J. O'Dell, George H. Stapely or John Maxwell? A. No, sir.

Q. If those persons made any application to your company in Cincinnati, what would be the course of business—
420 would the applications come to you?

The question was objected to by counsel for defendants as incompetent, irrelevant and immaterial.

The objection was sustained by the Master.

Mr. Robbins: That I can't ask whether the course of business of this Telegraph Company is on an application for quotations.

Mr. Jenks: Where no application is ever received.

Mr. Robbins: It is not that. It is a question of the course of business.

Mr. Jenks: No, sir; not in this case; you can't go into that at all. It is absolutely immaterial.

Mr. Robbins: I will put it on the record here then and let the Master rule, in the regular course of business, in the management of the quotation service of your company, with respect to applications received for the continuous quotations—

Mr. Jenks: Well, answer that yes or no.

A. Yes, sir.

Mr. Robbins: (Q) Now, state what that course of business is.

The question was objected to by counsel for defendants as incompetent, irrelevant and immaterial, and for the reason that the question covers a time that may be since the filing of the bill in this case.

The objection was sustained by the Master.

The Master: Limit your questions to the time, Mr. Robbins, at or prior to the date of the filing of the bill.

Mr. Robbins: (Q) Well, at or prior to the time of the filing of the bill?

A. Well, I have only hearsay knowledge as to the time of the filing of the bill.

421 Q. Well, that was about June 15, 1901.

A. Well, for the continuous quotations of the Chicago Board of Trade the plan is to require the party desiring those quotations to file an application, to be submitted to the Board of Trade for approval before the quotations can be started to such applicant—

Mr. Jenks: Now, I move to strike out the answer—

Mr. Robbins: Wait a minute until he gets through.

Mr. Jenks: —as not responsive to the question.

Mr. Robbins: Wait until he gets through.

The Master: Well, he says "the plan is"—that is not proper.

Mr. Robbins: (Q) Well, what is the course of business?

Mr. Jenks: Well, that I object to, the same objection as before.

The Master: Overruled. If you know the course of business, and can state it from your own knowledge, state it.

A. Well, I was stating it.

The Master: Well, you said "the plan was."

Mr. Robbins: That is what he means.

A. That is the course of business. It means the same thing, in my way of stating it, but you can change it to "the course of business."

Q. Proceed now?

A. The course of business is for the party desiring the continuous quotations of the Chicago Board of Trade to sign an application to be sent to the Chicago Board of Trade for approval, before the quotations can be furnished to such applicant. The application when signed and sent to us is transmitted to the Board of Trade, and they either approve or disapprove, or—they either approve or disapprove, and we make a record thereof in our books and notify the Superin-

422 tendent or other official of the telegraph company through whom the application was sent to us.

Q. Now, do you recall having received any such application from O'Dell, Stapely or Maxwell, defendants in this case?

A. Do I recall what?

Q. Receiving any application from either of them?

A. I think the record shows one such application.

Q. From whom was that?

Mr. Jenks: I move to strike out the answer. If that is in the record, the record is the best evidence of it.

The Master: The proposition is, do you recall receiving any of those applications? A. I thought I just stated that.

The Master: You didn't state what you were asked. You stated what was in the record. The question is, have you any personal recollection on that subject at all?

A. Well, of course I have a recollection to that effect, but handling as many papers as I do, I don't want to go on the stand and swear positively to a matter of that kind.

Mr. Robbins: (Q) Mr. Morgan, the persons that I include in that question are not the O'Dell Commission Company, but O'Dell individually, Stapely or Maxwell—do you recall having received any application from either of those three individuals for the quotations? A. I do not.

Q. Now, to your knowledge is the Western Union Telegraph Company or any of its subsidiary companies, furnishing continuous quotations to any person, firm or corporation from whom or which it has not received such an application?

The question was objected to by counsel for defendants.

423 The objection was overruled by the Master.

A. I could not know. It would be a physical, mental and all other kinds of an impossibility.

Q. What would be an impossibility? A. To know.

The question was objected to by counsel for defendants.

Q. To know what?

A. That the applications were or were not served.

Q. What?

A. To know or not to know that the applications were served, I mean.

Q. Well, as far as you know, does the Western Union Telegraph Company, or any of its subsidiary companies furnish these quotations to any person who has not transmitted an application to you?

The question was objected to by counsel for defendants on the grounds heretofore stated. The objection was overruled by the Master.

A. They do not furnish the quotations, the continuous quotations to any one who had not signed the application.

Re-cross Examination

By Mr. Jenks:

Q. Does it furnish them to any one who does sign the applications? [—] Our records so show—I believe they do.

Mr. Robbins: He said that in the case of an application that is made and is reported upon adversely by the Board of

Trade— (Q) Does your company, so far as you know, furnish quotations under those circumstances?

Mr. Jenks: I object to the question.

The objection was overruled by the Master.

A. So far as I know, we do not serve any one but approved applicants.

424 Mr. Jenks: (Q) Do you know whether they serve them or not? A. I said, so far as I knew.

Q. Well, do you know whether they serve them or not?

A. Well, how could I know? I am here now at this minute. How do I know what is going on across the street?

Q. I don't know. A. Well.

Q. Well, can't you say so, that you don't know whether they serve them or not. That is true, isn't it? You need not take it, because Brother Robbins asked you a question that you have got to answer everything just as he wants it.

A. I haven't; and I haven't answered your questions just as you wanted them either.

The Master: Answer that question. Read the last question.

Mr. Jenks: (Q) You don't know who are served by the Western Union Telegraph Company, do you?

A. Well, put the question again.

Q. (Read by the reporter.)

A. Not by personal eyesight.

The further hearing of said cause was adjourned to November 21, 1901, at 12:00 o'clock noon.

November 21, 1901; 12:00 o'clock M.

Parties met pursuant to adjournment.

Present: Counsel for respective parties.

425 Charles M. Baker, produced as a witness on behalf of the complainant having been first duly sworn, testified as follows:

Direct Examination

By Mr. Robbins:

Q. What is your business, Mr. Baker?

A. Assistant General Superintendent of the Postal Cable Company.

Q. As such, do you have anything to do with the distribution of the quotations of the Chicago Board of Trade by the Postal Telegraph-Cable Company? A. Personally, I do not.

Q. Well, do you have charge of that branch of the service?

A. I do not.

Q. Who does?
A. I presume the local superintendent of the company.
Q. I am speaking of the country at large?
A. Well, I am. I refer to the local superintendent in each district. For instance, the local superintendent here would have charge of the distribution of the market quotations.
Q. Well, who has charge of the question as to who shall have the quotations of the Board of Trade in your company?
A. Well, I don't know.
Q. Is Mr. Nally in town?
A. He is. He is at the hospital. His wife is very low; she had an operation.
Q. Well, we want whoever has general charge of the distribution of the quotations of the Postal Telegraph Company. You think that is Mr. Nally?
A. Yes, or F. W. Conger, the local superintendent.
Q. Can you find out over the 'phone who would be the proper witness for that?

(The Witness was here excused.)

426 Thomas McMahon, produced as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Robbins:
Q. What is your business?
A. Official wheat reporter, Chicago Board of Trade.
Q. Now, state what your duties are?
A. I collect the market reports of trades that are made in the pit between the buyer and seller.
Q. Which pit? A. The wheat pit.
Q. How do you do it?
A. Why, in the morning when the market opens, I watch whatever is offered and what is bid, I look to see what trades are made and put them down on a paper and send them out.
Q. What do you put them on? A. A slip of paper.
Q. Then, what do you do with them?
A. Hand them to an operator.
Q. Where is that operator with respect to your location?
A. Directly back of me.
Q. In the same enclosure? A. Yes, sir.
Q. You are both on the edge of the wheat pit?
A. Yes, sir.
Q. Now, when there is a variation from the price you have noted down, what do you do?
Q. Write it down on a slip, and hand it to the operator.
Q. Every variation in price on the wheat pit? A. Yes, sir.

Q. Between 9:30 and 1:15? A. Yes, sir.
Q. What does he do with them?
A. He times them and puts them down on the hook.
Q. He puts the time on each and sticks it on a hook?
A. Yes.
Q. Then what becames of that?
427 A. After one-fifteen, I take them off of the hook, take them up-stairs and put them in the quotation book.
Q. Put them yourself, in the quotation book? A. Yes, sir.
Q. Have you that book here? A. Yes, sir.
Q. That is a book of the original entry on which you make these original entries after the close of the market?
A. Yes (producing book).
Q. What was the opening quotation in the Chicago Board of Trade for October wheat on the 8th day of October last?
A. 67¾.
Q. What was the opening price that day for December wheat? A. 69⅜ to 69½.
Q. The closing price of October wheat? A. 68½ nominal.
Q. The closing price of December wheat?
A. 70¼ and ⅜ asked.
Q. 70¼? A. Yes, sir.
Q. That is what you call a split, is it?
A. A split, a quarter and ⅜ asked.
Q. The opening quotation of May wheat? A. 73 to 73⅛.
Q. The closing quotation of May wheat? A. 73⅝ to ¾.
Q. How many quotations were there for December wheat during that day sent out by the Board of Trade during that day? A. October 8th?
Q. October 8th, the same day you were on?
A. I will have to refer to the book I have got here.
Q. What is that?
A. Shall I count it in this book, or refer to a book I have in my pocket?
Q. Have you already counted it? A. Yes, sir.
Q. Well, unless counsel wants you to count it over again, you can give us the result of that count?
428 A. That is December wheat?
Q. December wheat? A. 143.
Q. The opening price of October wheat on the 7th day of October? A. 67½.
Q. What is the opening now on that date? A. 67½.
Q. The closing of that day? A. 67¾ nominal.
Q. The opening price of November wheat?
A. No trade that day marked—the first trade I had was at 11:58, 68½ bid.
Q. The opening price of December wheat that day?
A. 69⅜ to 69¼ to ⅜.

Q. The closing price? A. 69½ and ⅝ bid.
Q. The opening price for May wheat for that day?
A. 72⅞ to 72¾.
Q. The closing price? A. 73⅛ bid.
Q Now, the opening price on the 5th day of October last for May wheat? A. 72¼ to 72⅜.
Q. The closing price? A. 72⅝.
Q. The opening price of December wheat on that day?
A. 68¾ to 68⅞.
Q. The closing price? A. 69—9—9—⅛ sellers.
Q. October wheat? A. Opening?
Q. Yes. A. 67¼
Q. Closing? A. 67¼—⅜ nominal.

Cross-Examination

By Mr. Jenks:

Q. Mr. McMahon, do you call yourself a messenger boy or a collector of the market prices, or what do you call yourself?
A. A collector, I said that in the start.
429 Q. A collector? A. Yes sir.
Q. Do you collect anything except the prices as to deals in futures on the Board of Trade? A. No, sir.
Q. And in collecting those prices of the commodities do you look after anything besides wheat? A. Just wheat.
Q. Nothing else? A. No.
there
Q. Did you ever look after anything else than the wheat pit?
A. Well, I have at times; I have been in the corn pit, the oat pit and the wheat pit.
Q. How long have you been engaged there in the same line?
A. In all the three of them?
Q. As collector of prices?
A. A collector of quotations for ten years, about ten years.
Q. For whom did you work when you first went there?
A. The Western Union.
Q. The Western Union Telegraph Company? A. Yes, sir.
Q. Who paid you for your services when you first went there?

The question was objected to by counsel for complainant.

A. The Gold & Stock—

Mr. Robbins: Wait a minute, that is going into the affirmative matters of the answers, which are, that for thirty years prior to the making of this contract, the Western Union was allowed to collect quotations.

Mr. Jenks: I have a right to find out who this witness is, I think.

The objection was overruled by the Master.

Q. Did the Western Union pay you for your services?
A. The Gold & Stock Telegraph Company paid me for my services.
Q. But you worked for the Western Union Telegraph Company?

A. No, sir; I worked for the Gold & Stock, they had
430 the place the Gold & Stock. I understood the Western Union and Gold & Stock were just the same.

Q. Well, they are, are they not? A. I think so.
Q. The Western Union leased the Gold & Stock, didn't it?
A. I don't know.
Q. And operated tickers, the Gold & Stock merely managed tickers which were under the control of the Western Union. Now, wasn't it the Western Union that you worked for?
A. No, sir; my voucher always had Gold & Stock on it.
Q. Well, how long did you work there for the Gold & Stock Company? A. Since I was fourteen years old.
Q. Down to the present time? A. Yes, sir.
Q. And during that whole time, who has paid you for your services? A. The Gold & Stock.
Q. The Gold & Stock Telegraph Company all of the time?
A. They are not paying me now.
Q. Well, up to when?
A. I don't remember now, I think it was in June, 1900.
Q. June, 1900. Then, from the time you commenced ten years ago, up to June, 1900, you worked for the Gold & Stock Telegraph Company in gathering market reports on the floor of the exchange room of the Chicago Board of Trade and received your pay for services from the Gold & Stock Telegraph Company—is that correct? A. Yes, sir.
Q. Since the first of June, 1900, who has paid you for your services?
A. Well, the Board of Trade did pay us for a couple of months, and now we are on the Cleveland Telegraph pay roll.
Q. Are you working for the Cleveland Telegraph Company in gathering these market reports?

A. Yes, sir, I guess so.
431 Q. Are you acting under the supervision of Mr. Crawford the manager of the Cleveland Telegraph Company?
A. Yes, sir; and the Directors of the Board of Trade.
Q. In getting your pay for your services after the first two months—from the first of June, say, 1900, was it?
A. Yes, sir; I think so. Sometime about that.
Q. —who actually pays you? A. Now?

Q. Yes. A. Well, the Cleveland Telegraph Company.
Q. How do you actually get the money?
A. Go down stairs to the office.
Q. What office? A. The Cleveland Telegraph.
Q. And they pay you in currency?
A. Yes, sir; in an envelope.
Q. Who gives you the money now?
A. Well, the clerk in charge, I don't know his name.
Q. You don't know who he is? A. No.
Q. Mr. McMahon, for the past ten years since you have been collector of markets on the floor of the exchange room of the Board of Trade, have you ever taken the market prices of anything except transactions in futures or of purchase and sale of commodities for future delivery?
A. Oh, yes, I have taken sales on the wheat pit of cash wheat made through brokers of Armour, Seaverns, Elevator companies.
Q. What brokers make sales of cash wheat in the wheat pit? A. Valentime, George Seaverns.
Q. Who else?
A. C. E. Hill, Charles VanKirk, I can't remember them all. There is quite a few cash people.
Q. Are they all elevator men? A. No, not all.
Q. You have two books here. Do they both relate to the markets, the market prices established at the wheat pit?
A. Yes, sir.
432 Q. Covering what period of time are records kept in these two books? A. Yes, sir.
Q. You haven't heard the question?

(The question was read by the reporter.)

Q. In these two books which you have here?
A. Oh, from July 6th to November 1st.
Q. 1901? A. Yes, sir.
Q. Is there any other record kept of transactions in wheat during those periods, between those periods?
A. I didn't catch that.
Q. (Read by the reporter.) A. No, sir.
Q. I mean, have you got a record of all of the changes in the market prices as to wheat in those two books between the dates that those two books cover, or is there some other books that contain some of them? A. No sir.
Q. You have them all in those two books?
A. Well, there is a cash wheat book that we have got, but I haven't got it here. That is a miscellaneous book; the number 2 red—
Q. That is a miscellaneous book? A. Yes.

Q. As to the cash wheat, are there any continuous market quotations sent out? A. No, sir.

Q. From the Board of Trade? You say no to that?

A. No, wait a moment. There are some quotations that go out for cash wheat, three or four a day, but I don't send them out.

Q. You have nothing to do with that? A. No, sir.

Q. You have nothing to do with ascertaining the prices for cash wheat, have you? A. No, sir.

Q. Then, in these books that you have here, there is no price recorded for cash wheat between the dates covered by these accounts, is there?

433 A. Well, I am not sure of that. There are trades made in cash wheat, but I am not sure whether they are in here or not.

Q. Would there by any difference in the records, whether the wheat was cash or for future delivery? A. No, sir.

Q. You could not tell from the book whether the price is for cash wheat— A. Oh, yes.

Q. —or whether it is wheat for future delivery—You can tell, can? A. Yes, sir.

Q. On those books? A. Yes.

Q. Will you show us an item on the books that is a record of the market price for that time of cash wheat?

A. Yes, if I have got it in the book, I will.

Q. Well, you have the books there in front of you?

A. Well here is July. July is cash wheat.

Q. What day? A. July 6th.

Q. How many transactions in cash wheat on that day?

The question was objected to by counsel for complainant.

Q. How many on that day of cash wheat?

A. Well, cash wheat is the same as July wheat; that is the way we quote it, cash wheat and July; July 6th—thirty-one.

Q. How many in all on that day, did you send out prices for? A. Of the months?

Q. No, of the transactions that you sent out, the records of the transactions on that day, how many were there?

A. September and everything else?

Q. Yes, everything on that day?

A. 101 different quotations, and add the July there to it. This is just September I am giving you now. Do you want the total of September and July?

434 Q. No, you have got the 6th day of July.

A. The 6th day of July.

Q. I want the total number of changes in the prices that you sent out as market reports on that day? A. 173.

Q. Now, that which you have marked down there as July wheat, does that mean wheat that was contracted for to be delivered in the month of July, during the month?

A. I don't know.

Q. Why do you say it is the same as cash wheat? You know that it was not cash wheat, don't you?

A. No, sir; July 6th—we always call it cash wheat.

Q. You call it so, but don't you know that it was not?

A. No, sir; I don't.

Q. Don't you know that under the manner of trading there, July wheat means that one party or the other has the whole month to make the delivery; don't you know that?

A. No, sir; the reason I said that was, they come up and asked what is cash wheat during the month of July; it is always the same.

Q. You call it cash? A. Yes.

Q. Although, whether it was to be delivered immediately, you don't know anything about it?

A. No, sir; I don't know that. I am not a member of the Board of Trade; I am just simply collecting quotations. I don't know anything about that.

Q. You don't know what September wheat means, do you?

A. Certainly I know what that means; it means trading in September wheat.

Q. What does that mean?

A. September wheat trading, future delivery.

Q. Future delivery, when? A. In September.

Q. Now, on that day that you have in front of you, do you know any difference between the meaning of the word
435 July wheat and the meaning of the word September wheat, or any other month?

A. No, sir; simply getting those quotations and keeping them.

Q. You don't know?

A. No, sir; as the trades are made I collect them and send them out—hand them to an operator to send them out.

Q. How many of the day's transactions did you add up for Mr. Robbins—any, except the 8th day of October?

A. Yes, two or three. The last time I was up here I thought I was going to be asked these questions, so, to hurry things along, I copied them out of my book today, before I came here.

Q. How many prices were included in the market report sent out by you on October 8th, 1901?

A. October 8th, December quotations, 143; May, 84; October, 9.

Q. Making altogether how many? A. 236.

Q. 236; that is October 8th. How many were there October 7th? A. The total?

Q. The total, yes? A. 170.
Q. How many on October 5th? A. 96.
Q. That includes everything sent out on the 5th of October?
A. Yes, sir.
Q. Who keeps a record of the prices of cash commodities on the Board of Trade?
A. Well, I do in the wheat pit; and then we have got another man for miscellaneous, he keeps track of that. I don't know whether he is here now or not.
Q. Where is that book that you keep for the cash commodities? A. I don't believe it is here.
Q. I mean the book that you keep for cash wheat. You have a separate book for that, have you? A. Yes, sir.
Q. And where do you get the prices that you, put down in that book as the prices for cash wheat?
436 A. The reporter ain't here; I can't answer that.
Q. What is that?
A. That is the miscellaneous book. That [repore] reporter is not here.
Q. I thought you said you put them down?
A. I said—I do collect what is made in the pit, but sometimes they are made on the other side of the Board.
Q. Those that you put down, where do you get the prices?
A. Right in the wheat pit.
Q. You hear them? A. Yes, sir; cash wheat.
Q. Yes, that is cash wheat?
A. I always supposed it was; yes, sir.
Q. Do you put down in that book the same prices for the two same transactions that you put down in these books that you have here? A. Well, I do. I don't know what he does.
Q. What is his name, the man that keeps the miscellaneous book? A. E. F. Cooney.

Redirect Examination

By Mr. Robbins:

Q. Is there any difference in price on the Board of Trade between the current month and the cash property?
A. Well, a difference now between cash and May wheat—
Q. No, I don't mean that. By the current month, I mean the month you are in. Is there any difference between the cash property and the month you are in, in the case of July say—
A. No, sir; no, sir.
Q. Do you make any distinctions in sending out these quotations between the quotations of cash property and quotations for the current month? A. No, sir.

Q. So that, if there is a sale of what you call cash property in July, you send it out as a July quotation?

A. Yes, sir; a July quotation.

437 Q. You make no distinction between those?

A. No, sir.

Q. And in October, if there is a sale of cash property, you would send it out as an October quotation? A. Yes, October.

William E. Griffitts, produced as a witness on behalf of the complainant having been first duly sworn, testified as follows:

Direct Examination

By Mr. Robbins:

Q. With what telegraph company are you connected?

A. The Postal.

Q. And how long have you been with that company?

A. Sixteen years.

Q. What, if anything, do you have to do with the distribution by the Postal Telegraph Company of Chicago Board of Trade quotations? A. In what way do you mean?

Q. Well, what is your connection with the distribution of them by the Postal?

A. I have had—the quotations are sent out from our offices. As Manager, I have charge of the clerks that handle them.

Q. What?

A. I have charge of the clerks handling the quotations as sent out from our office.

Q. Well, who has to do with the designated persons who shall receive the quotations, or making contracts with the customers for the quotations, who passes on the application for the quotations? A. You mean continuous quotations?

Q. Yes. A. The Board of Trade.

Q. On behalf of the Postal Telegraph Company, who

438 has charge of that? A. Our Superintendent.

Q. Do you have to do with the applications that come in?

A. Only as I pass them on to the market committee for their signatures and approval.

Q. They are all passed to you?

A. Passed to me; yes, sir.

Q. And you pass them to the Board of Trade?

A. Yes, sir.

Q. And when they come back from the Board of Trade, what happen? A. I send them to the Superintendent again.

Q. Does the Postal Telegraph company send out any continuous quotations to persons who have not signed these applications, and that are passed to you and forwarded by you to the Board of Trade?

The question was objected to by counsel for defendants, as leading. The objection was overruled by the Master. To which ruling of the Master, the defendants, by their counsel, then and there duly excepted.

Q. (Read by the reporter.)
A. Do you want me to answer the question?
Q. Yes?
A. I don't know. Anything of that kind would not come to my knowledge.
Q. Well, according to the course of business of the Postal Telegraph Company in the distribution of its quotations, would anybody get quotations, that had not signed the applications provided in the contract between the Board of Trade and the Postal Telegraph company?

The question was objected to by counsel for defendants, on the grounds heretofore stated.

The Master: Objection sustained, on the ground that this gentlemen has not qualified.

Mr. Robbins: (Q) Do you know the course of business of the Postal Telegraph Company, with reference to con-
439 tinuous quotations? A. What?
Q. Do you know the course of business of the Postal Telegraph Company, with reference to the distributions of continuous quotations? A. Yes sir.
Q. Well, what have you to do with it?
A. I believe I explained that previously, did I not?
Q. Well, what is the course of business now—what is the course of business—explain the full course of business?
A. Do you mean the distributions after the contracts are signed?
Q. No, the steps that are taken to get the quotations.
A. For instance, we will say that a party in St. Louis, the Board of Trade or some broker, would desire continuous quotations he would make applications to his local manager; the local manager would forward the applications properly signed, to the Superintendent of the district, who would [sent] it to me to have it signed and approved by the Board of Trade, after which I would return it to the Superintendent, and he would return it to St. Louis, for instance, and the quotations would be immediately started.
Q. That is, in case the Board of Trade should act favorably upon the application? A. Yes, sir.
Q. Now, in case the Board of Trade should not act favorably upon the application, what would be done with it?
A. The quotations would not be started.
Q. No word would be sent back to the local office?

The question was objected to by counsel for the defendants, as leading; the objection was sustained by the Master.

Q. Well, what communication, if any, would go to the local office in that case?

A. The correspondence would be returned to him with explanations.

440 Q. Now, has the Postal Telegraph Cable Company, since the 1st of April, 1901, furnished the continuous quotations of the Chicago Board of Trade to any person, firm or corporation who has not sent in the application in the manner in which you have stated, and whose applications has not been acted favorably upon?

The question was objected to by counsel for defendants, as leading and improper. The objection was overruled by the Master.

A. I have no knowledge of that.

Q. What? A. I have no knowledge of that being the case.

Q. What being the case?

A. That the quotations have been furnished to other people than those approved by the Board of Trade.

Q. So far as you know in the office and in your department of the business, have such quotations been furnished to any such persons contrary to the circumstances named?

A. No, sir.

The question was objected to by counsel for defendants, as leading. The objection was overruled by the Master.

Q. That is, without the application, and without the approval of the application by the Board of Trade?

A. No, sir; not to my knowledge.

Q. Since the 1st of April, 1901, has the Postal Telegraph Cable Company furnished the continuous quotations of the Chicago Board of Trade to the O'Dell Commission Company, W. J. O'Dell, George H. Stapely or John Maxwell, of the City of Cincinnati?

The question was objected to by counsel for defendants, as leading and improper. The objection was overruled by the Master.

A. I don't know.

Q. So far as you know, have the quotations been fur-
441 nished by the Postal Telegraph Cable Company?

A. So far as I know, they have not—

Mr. Jenks: That is objected to.

The Master: That is the duplicate of the other answer. It may stand.

Mr. Jenks: We object to the question.

Mr. Robbins: (Q.) Has the Postal Telegraph Company in the state of Ohio or the city of Cincinnati, any other telegraph company with which it has any operating contract or other arrangement, and which it is distributing quotations of the Chicago Board of Trade?

A. Not to my knowledge.

Cross-Examination

By Mr. Jenks:

Q. *How long have you been with the Postal Telegraph Cable* Company—is that the name of the company? A. Yes, sir.

Q. How long have you been with that company?

A. About sixteen years.

Q. In what capacity during that time?

A. As operator, as chief operator, and as Manager at the Board of Trade.

Q. During the time you have been there what proportion of the time has that Telegraph Company sent out market reports from the Chicago Board of Trade?

The question was objected to by counsel for complainant, as affirmative matter and improper cross-examination. The objection was overruled by the Master.

A. I can only answer so far as my connection as manager, two years prior to that, I don't know what they did.

442 Q. Well, prior to two years, what were you doing there? A. I was an operator.

Q. Oh, a telegraph operator?

A. Yes, sir; a portion of the time as chief operator.

Q. As a telegraph operator, did you send out the market reports? A. No, sir.

Q. Are the market reports sent out over the wires of that company by a telegraph operator?

A. On some circuits; yes, sir.

Q. Over what wires of that company are those market reports sent out? A. Do you refer to continuous quotations?

Q. Yes.

A. They are not sent over the public wires. My previous answer was incorrect. That is, I mean by the public wires, they are not sent out by the operators in the employ of the Postal Telegraph company.

Mr. Jenks: You didn't understand the question.

(The question was read by the reporter.)

A. Over what wires?

Q. Yes. A. I think they might be termed leased wires.

Q. Leased from whom?
A. From the Postal Telegraph Company.
Q. What?
A. Leased from the Postal Telegraph Company.
Q. Leased by whom?
A. By the receiver of the continuous quotations.
Q. I didn't know but what you made a distinction between the Postal Telegraph Company and the Postal Telegraph Cable Company.
A. Not in reply to your questions, no distinction whatever.
Q. There is no Postal Telegraph company, is there?
A. That is merely an abbreviation of the Postal Telegraph Cable Company.
A. All right; it is only one company? A. One company.
Q. Where does your company get the market reports
443 to send out?
A. We get them from the Cleveland Telegraph Company.
Q. At what point do you get them? A. At Chicago.
Q. Well, what particular point?
A. We get them at the Board of Trade.
Q. Do your wires run into the exchange room of the Board of Trade? A. Yes, sir.
Q. Does any other operator have anything to do with the market reports by the way of sending them out by wire than the operator for your wire? A. Do you mean continuous?
Q. Yes? A. No, sir.
Q. To what different cities does your company send the market reports from the Board of Trade?
A. We furnish but one point, Toledo, with continuous quotations.
Q. Who receives them there? A. The Board of Trade.
Q. You send no continuous quotations to Cincinnati, Ohio?
A. Not to my knowledge.
Q. You distribute in the city of Chicago?
A. Not to my knowledge.
Q. You distribute them to no person, persons, or corporations except to the Board of Trade at Toledo, Ohio,—is that correct?
A. I would like to amend an answer I made a moment ago, regarding Chicago; we do furnish continuous quotations to one firm in Chicago.
Q. Aside from that, is my next previous question true?
A. Not to my knowledge.
Q. You are not very extensively engaged in distributing market reports then, are you? A. Not continuous, no sir.
Q. Whom do you furnish them to in Chicago?
A. J. F. Harris.

444 Q. And what is his business?
A. General commission business on the Board of Trade.
Q. Does he receive them by means of a ticker instrument?
A. No, sir.
Q. By what sort of instrument? A. By a Morse sounder.
Q. Has he the means of sending those quotations out by wire? A. He has a system of leased wires, I believe.
Q. Then he has the means of sending the market reports out by wire? A. I should judge so.
Q. Did the Postal Telegraph company once gather reports on the floor of the exchange room itself? A. No, sir.
Q. When it first commenced there, from whom did it obtain the reports?

The question was objected to by counsel for the complainant as proof of the affirmative part of the answer, and not proper cross examination. The objection was sustained by the Master.

Q. Were those reports gathered by the Western Union Telegraph Company?

The question was objected to by counsel for complainant as proof of the affirmative part of the answer, and not proper cross-examination. The objection was sustained by the Master.

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Q. Were they gathered by the Gold Stock Telegraph Company?

Mr. Robbins: Same objection.
The Master: Sustained.

The further hearing of said cause was here adjourned to November 22, 1901, at 9:30 o'clock A. M.

445 November 22, 1901;
9:30 o'clock A. M.

Parties met pursuant to adjournment.

Present: Counsel for respective parties.

At 12:05 o'clock P. M. the further hearing of said cause was adjourned to November 25, 1901, at 2:00 o'clock P. M.

November 25, 1901;
2 o'clock P. M.

Court met pursuant to adjournment.

Present: Counsel for respective parties.

Whereupon the Master ruled that the case be continued until November 26, 1901, at 10:00 o'clock A. M.

Whereupon the further hearing of said cause was continued to November 26, 1901, at 10:00 o'clock A. M.

November 26, 1901;
10:00 o'clock A. M.

Court met pursuant to adjournment.

Present: Counsel for respective parties.

Whereupon the Master and counsel for respective parties repaired to the chambers of Honorable Peter S. Grosscup, one of the Judges of the United States Circuit Court, for the Northern District of Illinois, where the following proceedings were then and there duly had, to wit:

446 Frederick E. Crawford, having resumed the witness stand, was further cross-examined by Mr. Jenks, and testified as follows:

Q. Mr. Crawford, you testified the other day in answer to Mr. Robbins, that you had a talk—

Mr. Robbins: Wait a minute, I want to suggest that when you certify questions to the Court and go before the Court and have the questions passed upon, that you should dispose of those questions first before abandoning them and going to something else. I submit that the proper order now is to dispose of those questions, and I am entitled to that, because as the record now stands we have those questions asked and unanswered—

The Master: I will state that if Mr. Jenks desires to ask those questions, I would like them asked now. If he desires to abandon them, then—

Mr. Jenks: I am going to ask those questions and I am just getting started.

(The question so far as put was read by the reporter.)

Q. (Continuing)—with Mr. Warren, the President of the Board, Mr. Robbins and some of the Directors of the Board being present in regard to some matters. You also said that this written agreement between the Board of Trade and the Cleveland Telegraph Company was in existence. You also said that it cost to gather the market reports about $600 per month. When you answered that question about $600 per month, had you in mind the written agreement that I have mentioned, or had you in mind the talk between you and the President of the Board of Trade and Mr. Robbins, in the presence of some of the directors? A. Is that the question now?

Q. Yes, sir.

447 A. I had in mind merely the fact as to what it did cost to collect the quotations.

Q. Who paid that cost?

Mr. Robbins: Wait a moment. I think those questions should be asked. I think the next in order is the asking of those questions.

The Master: As I understand it, that was one of the questions.

Mr. Robbins: No, no; that was not one of the questions. The questions are in the record, there are four of them, and I think that counsel should either withdraw them or ask them.

Mr. Jenks: I shall ask every one of them.

Mr. Robbins: Well, then ask them.

The Master: Objection overruled to that. Answer.

A. If my recollection serves me correctly, I have already answered this question, as to who pays the cost.

Mr. Jenks: (Q.) Do you mean by that, that you have answered that the Cleveland Telegraph Company pays the cost?

A. My recollection is that my answer was somewhat longer than that; I don't know just how it was recorded. I think that shows. I know you wanted to accept part of the answer and strike out part of it. I don't remember just which part of it was accepted, or which part stricken out, or how it was recorded.

Mr. Robbins: I make the point that that subject has been already covered.

Mr. Jenks: (Q.) Does the Cleveland Telegraph Company pay the cost?

A. As far as handling the money to the men is concerned, yes.

Q. Does the Cleveland Telegraph Company pay the Board of Trade anything for market reports? A. Yes, sir.

Q. How much?

A. Now, isn't this the question that has been up?

448 The Master: It is one of the questions, as I understand it.

Mr. Jenks: Answer the question.

A. The Cleveland Telegraph Company pays or has paid to the Board of Trade sums of money at different times out of its earnings, such sums as it could spare from its earnings.

Q. How much does it pay for the Board of Trade for these market reports?

A. So far as I know, I can only say that it has paid certain sums. My understanding is that certain sums accrue to the Board under the contract which is in evidence here. Whether a final settlement has been made of those sums, I do not know. I know that certain sums have been paid to the Board of Trade.

Q. When? A. At various times; too many for me to recall.

Q. Down to how recently?
A. Oh, within ten or fifteen days.
Q. Who made the payment that was last made?
A. I ordered the payment made. I don't remember the—
Q. How much was it?
A. I don't remember the exact amount.
Q. What was it for? A. On account.
Q. Do you remember any amount that was paid by the Cleveland Telegraph Company to the Board of Trade?
A. Not absolutely the exact amount.
Q. Do you remember anywhere near the amount? A. Yes.
Q. How much, according to your best judgment?
A. I remember amounts of, in the neighborhood, of $300.00, and—
Q. Any amounts in the neighborhood of $300.00 that were paid out, were they stated any place? A. No, sir.
Q. What were the payments for, what were they on account of?
A. According to my understanding, under the contract between the Cleveland Telegraph Company and the Board of Trade, whereby the Cleveland Telegraph Company agreed to pay the Board of Trade a certain amount in proportion
449 to the amount of business it did.
Q. Has the Cleveland Telegraph Company paid these amounts, according to the written agreement?
A. I don't know whether there has been a final adjustment or not; that would not be in my hands.
Q. Whose hands would that be in?
A. I don't know that.
Q. You don't know? A. No, sir.
Q. And yet you are manager of that telegraph company?
A. Yes, sir.
Q. Is anybody else the manager of it?
A. No, sir; not here. I don't control the company, however.
Q. Who does? A. I don't know.
Q. Where is the main office of the company?
A. I don't know what the legal definition of a main office is.
Q. Where are the books of the company?
A. The records of the company?
Q. Yes. A. I don't know.
Q. Where are the account books of the company?
A. I have some of them.
Q. Where? A. In my office in the Rialto building.
Q. Have you books of the company which show what amounts have been paid by your company to the Board of Trade.
A. I have a complete record of everything I have done. Yes, sir.
Q. And those books will show?

A. Show what I have done, and what has been done in my office.

Q. Will they show what payments have been made to the Board of Trade?

that

A. They will show all payments I have made. I don't know what the company may or may not have done.

Q. Has the company any account books anywhere else?

A. I don't know.

Q. Do you know how much the Cleveland Telegraph
450 Company pays to the Board of Trade per month for market reports?

A. There isn't any amount fixed. It is a shifting amount, as I understand it.

Q. I didn't ask you the amount, sir; I ask you if you know.

A. Well, then I will have to answer no, then.

Q. You can't say how much it does pay—is that correct?

A. That is correct.

Q. Does it pay any other or different price than that named

written

in the agreement, which agreement is marked Complainant's Exhibit 1 in this case, and this is it. (Handing paper to witness.) A. Not that I know of.

Q. Does it pay the amount named in that written agreement?

A. The final adjustment of its accounts is not in my hands, as I have stated.

Q. In whose hands is it? A. I do not know.

Q. Who hires you?

A. The Cleveland Telegraph Company.

Q. With whom did you make the agreement or have the talk about being hired?

A. Mr. Solders and a Mr. Tilden, if I remember correctly.

Q. Where? A. Where was the talk?

Q. Yes.

A. I am not certain; either in Cleveland or Chicago; I am not certain as to that.

Q. What was said at the talk.

A. There was too much said for me to repeat; a general talk as to the business affairs.

Q. What was said about your being employed to superintend the Cleveland Telegraph Company?

A. I can't remember what was said. An agreement was reached between us, whereby I undertook to take charge of their business for a certain salary.

Q. And you did take charge of it? A. Yes, sir.

Q. And you have charge of it? A. Yes, sir; locally.

in

451 Q. By locally you mean Chicago?

A. In Chicago; yes, sir.

Q. And do you manage all the affairs of that company in Chicago?

A. So far as the operation of their tickers, quotation service is concerned. They may do other business here that I don't know anything about.

Q. But so far as paying bills in Chicago, you manage—

A. Yes, sir.

Q. Now, sir, is there any means by which you can tell how much you pay the Board of Trade per month for market reports?

A. I could find out how much I have paid them; yes, sir.

Q. How long would it take you to find out?

A. I don't know.

Q. Is an account kept in a cash book that you keep?

A. I have records of everything that I handled; yes, sir.

Q. And how long will it take you to produce them here?

A. I don't know.

Q. Where are they? A. In my office.

Q. And your office is where? A. In the Rialto building.

Q. How far is it from here?

A. You can judge as well as I.

Q. About three blocks? A. Maybe so.

Q. Will you produce those books here?

A. I don't see why I should be asked to do anything of the kind.

Mr. Robbins: Now, Mr. Master—

The Master: Yes. I think the only proposition would be as to how much the Cleveland Telegraph Company actually pays, or actually has paid. I think it should be confined to that,—as to whether the contract was in force or not? That would be the only proposition.

Mr. Robbins: Well, since the Judge's ruling, it appears on the cross-examination of this witness, who is their operating man in Chicago, gets the money to run the local office, and pays them certain amounts on account. Now, is the amount paid on account at all material in this cross-examination?

452

The Master: I should think the witness might be able to answer the question generally, as to how much was paid approximately.

A. I can, approximately.

The Master: He has asked you that, and yousaid you didn't know.

A. I don't know exactly; he didn't ask me approximately.

Mr. Jenks: Well, can you tell exactly by looking at your books?

A. Oh, yes.

Mr. Jenks: I ask you to produce those books here and look at them.

Mr. Robbins: I ask that the question be put in the form that the Master suggests.

A. I have stated, to repeat, that all payments have been made on account, and that the payments have been many and recent.

Mr. Jenks: (Q.) Does the Board of Trade pay the Cleveland Telegraph Company anything for gathering the market reports?

A. The cost of gathering the market reports is charged to the Board of Trade, and treated as a remittance to them by the Cleveland Telegraph Company.

Q. Now, you say you had a talk with the President of the with
Company and Mr. Robbins.

A. The President of the Company?

Q. Of the Board of Trade—with Mr. Warren, the President of the Board of Trade, and with Mr. Robbins, when some directors were present. When was that talk?

A. Oh, there were a number of them, perhaps—I don't know just the date when the matter was finally agreed upon,
453 as to what they would do.

Q. About when?

A. About the 1st of August, 1900, sometime.

Q. Do you mean about the 1st day of August?

A. I mean just what I have said.

Q. Do you mean the 1st day of August? A. Yes.

Q. Where was that talk to which you referred in your direct testimony?

A. In the President's office of the Board of Trade.

Q. What was said there? State the whole of the conversation? A. I can't do it.

Q. Then state the substance of it?

A. The conference was too long for me to do that, in answering a legal question. I can't state the substance of it.

Q. How much do you charge the Board of Trade per month for gathering the market reports?

A. Whatever it costs to do it.

Q. How much does it cost to do it?

A. In the neighborhood of $600. a month.

Q. Where do you make that charge?

A. How do you mean?

A. Against the Board of Trade? A. Where do I make it?

Q. Yes?

A. The charge is made in Chicago, if that is what you mean.

Q. Is it made on a book? A. Yes, or on a record.

Q. What do you call the book? A. A record.

Q. What do you call the book? A. I don't know.

Q. Who makes it? A. We make it up from our records.

Q. Who writes the book?

A. It is not necessarily in a book.

Q. Is it in a book?

A. It is made up from pay rolls largely.

Q. Is it in a book?

A. I don't know whether it is all in a book or not.

454 Q. Do you charge the Board of Trade anything for gathering the market reports—yes or no? A. Yes.

Q. Where do you charge it?

A. I don't see any sense in the question. We make the charge when our records are complete.

Q. What book is it charged in?

A. I don't know. I am not a book-keeper.

Q. Who keeps the book? A. I don't even know that.

Q. Who makes the charge? A. I don't know.

Q. What was the amount of the charge?

A. Whatever it costs.

Q. How much does it cost?

Mr. Robbins: Ph, he has stated that three or four times.

A. I have answered that question a dozen times.

Mr. Jenks: (Q) Who keeps the books?

Mr. Robbins: I object to that as repetition.

The Master: Sustained. He says he does not know.

Mr. Jenks: (Q) Have you any book on which the charge is made? A. I don't know.

Q. You have said that you keep books in your office, haven't you? A. I presume I said so; we do.

Q. Who keeps them?

Mr. Robbins: I object to that. That is the same question over again.

The Master: He didn't say who kept the book, as I understand.

The Witness: He is referring to a particular book, I don't know what one.

Mr. Jenks: Who actually has charge of that book?

A. I have not located the book yet.

Mr. Robbins: I think this question is as to the books gen erally. The other question was as to a certain book.

455 He has as asked who keeps the books of this company already two or three times, and he asked the man's name.

The Master: I think so.

Mr. Robbins: And I object to it as repetition.

Mr. Jenks: Now, you are both mistaken. It was as to the cashier.

The Master: Very well, you may answer now as to who keeps the books, if you know.

A. We have a man by the name of Robertson—I don't know his name certainly—he is what we call our bookkeeper at the present time.

Q. Give us his full name?

A. John Robertson,—but he has several assistants as a matter of fact, we have a kind of joint propostion with the Chicago & Milwaukee Telegraph and the Cleveland Telegraph Company, and we have three or four people in that office who are liable to make up different records at different times.

Q. Who does make up the accounts between the Cleveland Telegraph Company and the Board of Trade?

A. No final accounts are made up in our office.

Q. Who keeps the accounts? A. I don't know.

Q. Are they kept in a book? A. I don't know.

Q. What does the bookkeeper do there?

A. He sends out bills, credits payments, makes up pay-rolls, and does any office work that there is to be done.

Q. On what book does he credit payments?

A. I don't know.

Q. How do you know he credits payments?

A. I have received certain statements which showed me what was going on at different times. I took them over—

Q. Whom did you receive them from?

456 A. From the bookkeeper or bookkeepers, sometimes one, and sometimes another.

Q. Does the Cleveland Telegraph Company furnish to the Board of Trade of the City of Chicago every sixty days a full and complete list of the names and locations of all persons, firms or corporations to which it is furnishing or has furnished during the preceding sixty days said complete and continuous quotations of said Board of Trade?

A. The Board of Trade has a complete list at all times. It is not held for sixty days; it is continuous.

Q. You don't do that every sixty days?

A. We do it oftener than that. It is continuous. We have a complete record at all times of our customers.

Q. Does the Cleveland Telegraph Company on or before the 10th day of each month, or has it ever, since the 31st day of July, 1900 rendered to the said Board of Trade an account, showing the number of persons furnished by it with continuous quotations?

A. It has done that. I don't know that it has done it on the 10th day of every month because the record is, as I say now, continuous. Those clauses are somewhat inoperative, because of the fact that we don't take any subscribers now, except such as are approved by the Board of Trade, and they know just exactly what subscribers they are.

Q. You don't act under this written agreement at all, do you?

A. I don't act for the Cleveland Telegraph Company in its final arrangements with anybody.

Q. You don't act with the Board of Trade under this written agreement at the present time?

A. I am not the Cleveland Telegraph Company. I do pay the Board of Trade money under that agreement, so far as I understand it, following the instructions of the—

Q. How much money have you paid the Board of
457 Trade for the Cleveland Telegraph Company since the 31st day of July, 1900?

A. I don't think I can figure that accurately enough to answer the question.

Q. Is there any record kept in your office as to the amount so paid? A. Yes, sir.

Q. In what is that record kept?

A. I don't know absolutely what it is in. What is the period asked, since the 19th day of July—the 31st day of July, 1900, to date?

Q. Since the date of this written agreement, yes, what is that record kept in?

Mr. Robbins: Well, let him answer the question, will you? You have got two questions there.

Mr. Jenks: I think not, is there?

A. You asked me what we had paid or what I had paid?

(By request of counsel the question was read by the reporter.)

A. I don't know.

Q. Who keeps it?

A. It hasn't any special custodian. It is in our business in various forms. It could be traced out in three or four ways.

Q. Who directs the keeping of it? A. I do, I suppose.

Q. Whom do you give directions to?

A. To our office employes.

Q. Have you ever seen that record?
A. What record do you refer to—the record of the payments?
Q. The record in which these items are kept.
A. I have seen statements which comprised the items.
Q. Are those statements on separate slips of paper?
A. They are made up for my information, to check them over at various times.
458 Q. Are they made up from a book?
A. Not always, perhaps—I don't know.
Q. Are they written in a book?
A. I don't know whether they are completely written in a book or not.
Q. How many account books does the Cleveland Telegraph Company keep in your office? A. I don't know.
Q. Do you know any of these books?
A. We have a number of record books there that I know of; yes, sir.
Q. What is the name of them, so far as you know?
A. I know of a record book which contains the number of customers we have and who they are and so forth; and a record book—most of our records are kept in a special form; books that are made for our business.
Q. Do you keep an account in any book of moneys received and moneys paid out by the Cleveland Telegraph Company?
A. I don't know that any one book would cover it all.
Q. How many books will it take to cover it all?
A. I don't know.
Q. Is there any one book that will cover any part of it?
A. Any part of what?
Q. Mr. Witness, do you know what we are talking about here now?
A. Well, you are getting kind of mixed up, I think, just at the present time. I thought I knew a while ago.
Q. Is there any one book in your office in which is recorded any part of the amount of money received or paid out by the Cleveland Telegraph Company?
A. Our records of our transactions I think are entirely complete.

Mr. Jenks: That does not answer the question, and I insist, if the Master please, upon the witness answering that question.
Mr. Robbins: I think he has answered it, and answered a lot more [than] you have been putting in here, over and over again.

459 (By request of the Master the question and answer were read by the reporter.)

Mr. Jenks: Now, I will insist upon the witness answering that question yes or no.

The Master: Do you understand the question, Mr. Witness?

A. If I understand the question, is it, is there any one book? Now, I am not testifying as to any one book. I don't know what "any one book" may or may not cover.

The Master: In other words, you don't know. Is that the idea?

A. That is the idea. I don't know what "any one book" may or may not cover.

Mr. Jenks: (Q) Is there any book in the Cleveland Telegraph Company's office, which office is where your office is, and which office you conduct, all the business therein you superintend, in which is recorded an account of any money received or paid out by the Cleveland Telegraph Company?

A. I can only repeat my answer, that the records of our transactions or the transactions through our office are complete, and that the records there show the moneys received and moneys paid out.

Q. What do you call the book—

Mr. Robbins: No, I object; he said he didn't know three or four times.

The Master: Wait until he finishes his question. Is that the completed question, Mr. Jenks?

Q. (Continuing)—in which you say the records are kept?

A. I didn't say they were kept in a book.

Mr. Robbins: I object; the witness has said he does not know, three or four times.

460 The objection was sustained by the Master.

Mr. Jenks: (Q) Mr. Crawford, do you know the name of any book in that office?

The question was objected to by counsel for complainant as having been answered. The objection was overruled by the Master.

A. I know the name of a record book.

Q. What is the name of it? A. Record book.

Q. How many record books are there there?

A. I am referring to one.

Q. And what is contained in that record book?

A. A list of subscribers to the Cleveland Telegraph Company's quotation service.

Q. Anything else?

A. Certain information in regards to the locations of service, the date that it began and so forth.

Q. Is there any other book in that office, and in your office which you know the name?

A. We have a half dozen books there. I don't know the specific names; don't pay any particular attention to that.

Q. You don't know the name of any other book there?

[Q.] I don't see why I should be required to answer any more questions of—

The Master: I think so far as the question is concerned, his knowledge or lack of knowledge has been fully shown, and that being the only purpose of letting the evidence in, I think we will stop it.

Mr. Jenks: Have you talked with Mr. Robbins, since you were on the stand the other day?

Mr. Robbins: Now, is that a proper question, with Mr. Robbins—He is an officer and I am the attorney—

461 Mr. Jenks: I mean the solicitor for the Board of Trade who is now present in this room.

The Master: Are you confining it to matters pertaining to this suit, Mr. Jenks? I would like to have you confine your question to matters pertaining to this suit.

Mr. Jenks: Well, first, whether he has talked with [hom].

The Master: Answer. Have you talked with Mr. Robbins?

A. I have; yes, sir.

Mr. Jenks: Have you talked with him about your testimony in this case?

A. I exchanged one remark with him I believe.

Q. Did you get any suggestion from him as to how to answer these questions? A. No, sir.

Q. Did you tell him how you would answer them?

A. No, sir.

Q. Do you know now the name of the President of the Cleveland Telegraph Company? A. No, sir.

Q. Do you know now the names of any officers of that company?

A. Mr. D. H. Tilden, I believe, is an officer of that company.

Q. Do you know what office he holds?

A. I think he is Secretary.

Q. Where does he live? A. Cleveland, Ohio.

Q. Do you know the name of any other officer of that company? A. No, sir.

Mr. Robbins: You went all over that the other day?

Mr. Jenks: I didn't know but what he had learned since then. * * * That is all.

The complainant here rested its case.

Mr. Jenks: I think we will be ready to go on at two o'clock.
Mr. Robbins: Make a note of the time of adjournment—twenty minutes to twelve. I ask that the taking of the evidence be proceeded with until the time of the adjournment.

462 At 11:40 o'clock A. M. the further hearing of said cause was adjourned to 2:00 o'clock P. M. November 26, 1901.

United States of America, Southern District of Ohio, Western Division.

Board of Trade of the City of Chicago, a corporation, Complainant,
vs.
The O'Dell Commission Company et al., Defendants.

December 11, 1901;
9:30 o'clock A. M.

Parties met pursuant to adjournment.

Present: Counsel for respective parties.

Whereupon the complainant, to further maintain the issues upon its part, by its counsel, introduced the following evidence, in rebuttal:

George F. Stone, having been first duly sworn, was examined in chief by Mr. Robbins, and testified on behalf of the complainant, in rebuttal, as follows:

Q. Mr. Stone, how long have you been Secretary of the Board of Trade?

Mr. Jenks: Wait a moment. I object to the question, and I make the same objection that I did yesterday, to Mr. Robbins at this time putting in any evidence at all, either in rebuttal or otherwise.

The Master: The Master will permit the complainant to put in rebuttal evidence purely. Objection overruled.

463 To which ruling of the Master counsel for defendant then and there duly excepted.

Mr. Robbins: Answer.
A. A little over seventeen years.
Q. Are you custodian of the records of the Board of Trade?
A. I am.
Q. And have been for the last seventeen years?
A. Yes, sir.
Q. How far back do the records go?
A. They go back to the fire.

Q. Have you anything prior to the fire, that you know of, in the way of a record? A. Not that I know of.

Q. When was the first action taken by the Board of Trade in reference to the collection or distribution of its market quotations, so far as your records show?

Objected to by counsel for defendants as not rebuttal, as incompetent and irrelevant, and for the further reason that the Board of Trade, by its own records, cannot make evidence controlling or relating to facts that have been proven in this case.

The objection was overruled by the Master. To which ruling of the Master counsel for defendants then and there duly excepted.

A. 1883.

Q. What was that action?

Mr. Jenks: I object to that question for the same reason.

Q. (Continuing.) I mean by that, what was the nature of that action?

Mr. Jenks: I still object for the same reason.

The Master: That question may be answered.

To which ruling of the Master counsel for defendants
464 then and there duly excepted.

A. That action was the adoption of a rule by the Board of Trade authorizing the—

Mr. Robbins: Never mind about that.

Q. Have you a record containing that rule? A. Yes, sir.

Q. Please produce it and turn to the rule that you refer to?

Mr. Jenks: Same objection as formerly made to the records of the Board of Trade, and the same as to its not being rebuttal of anything in this case.

Master: Overruled.

To which ruling of the Master counsel for defendants then and there duly excepted.

A. Section 20 of rule four.

Mr. Robbins: I offer that rule in evidence, and ask that the witness read the rule into the record.

Mr. Jenks: I object to that.

The Master: I would like to have you qualify him a little further, to the effect that he knows of his own knowledge that that was the rule at that time.

Mr. Robbins: (Q.) Do you know of your own knowledge that that was the rule of the Board of Trade adopted at the time you speak of?

Mr. Jenks: Same objection.

The Master: Objection overruled. To which ruling of the Master counsel for defendants then and there duly excepted.

A. I do.

Whereupon said document was read in evidence by the witness as follows:

A. "The following was adopted as Section 20 of Rule IV of the rules of the Board of Trade of the City of Chicago, August 29, 1883:

465 "Sec. 20. The Board of Directors shall provide an efficient corps of market reporters, whose duty it shall be, under such regulations as may be prescribed for their government, to ascertain the current market prices of such commodities as are dealt in by members of the Association, during the hours for trading prescribed by these rules, the reporting of which may be desired by any considerable number of correspondents, and also all changes which may occur in the same from time to time; such reports to be promptly communicated by telegraph to such approved correspondents of the City of Chicago or elsewhere, as may desire the same, and are willing to pay the necessary charges for compiling and transmitting them by telegraph under such arrangements as may be made by the Board of Directors with any telegraph company for the performance of the service of transmission. The forwarding of such reports to any particular individual, firm or corporation shall be only on the condition that it is an accommodation service in which the Board of Trade assumes no responsibility beyond reasonable care in their compilation, and one that may be performed at the pleasure of the Board, or if performed, may be discontinued or withheld, with or without previous notice. Any individual, firm or corporation, before being supplied with the reports herein provided for, shall make application for the same in such form or manner as may be authorized by the Board of Directors, which application shall be approved by the Board of Directors, or by a committee appointed by it for that purpose, before any reports are forwarded to applicants. A list of all correspondents to whom such reports are sent shall be kept on file in the office of the Secretary of the Board, and shall be subject to the inspection of any member desiring to do so."

Mr. Jenks: I will move to strike that out, for the
466 reason that it has been decided by the Courts that that rule is illegal, inoperative and void.

The Master: Overruled; it may stand, subject to the objection. To which ruling of the Master counsel for defendants then and there duly excepted.

Mr. Robbins: (Q.) When was the next action taken by the Board of Trade, with respect to the collection or distribution of its quotation, as shown upon its records?

Mr. Jenks: Same objection.
The Master: Overruled.

A. In 1889.
Mr. Robbins: (Q.) Have you the record of the action of the Board at that time present here? A. Yes, sir.

Mr. Jenks: Same objection.

Mr. Robbins: Please turn to it.
A. I have the record here.
Q. What book have you now in your hand?
A. I have the record of the proceedings of the Board of Directors of the Board of Trade for the year 1889.
Q. Kept by you? A. Kept by me.

Mr. Robbins: I offer in evidence the resolution appearing of record on page 135 of this record book, and ask that the witness read the resolution into the record, as the book is a large one, and the Board of Trade does not wish to send it out of its jurisdiction.
Mr. Jenks: Same objection. I don't think that it is necessary to object to all this—
The Master: No, all of this class of testimony you object to as being incompetent.
Mr. Jenks: I object to this class of testimony as not rebuttal, as incompetent, irrelevant, and not in the power of
467 the Board of Trade, by its own records, to bolster up transactions that are conducted in its exchange room.
The Master: The evidence will be let in, subject to the objection. To which ruling of the Master Counsel for defendants then and there duly excepted.

The Master: You don't object to the fact of the copy being put in?
Mr. Jenks: No,—that is, I do object to the copy being put in, but I don't object to the use of the copy instead of the book.
The Master: Very well.

Whereupon the document was read in evidence by the witness, as follows:

468 Mr. Robbins: Under what date is the meeting of the Board of Directors that contains the resolution you have just read?

Mr. Jenks: Same objection.

A. May 14, 1889.

Mr. Robbins: (Q.) What was the next action of the Board of Directors respecting the collection or distribution of its quotations, as shown by its records?

Mr. Jenks: Same objection.

A. July 9th of the same year.

Mr. Robbins: Read the resolution of the Board of Directors of that date from this book.

Mr. Jenks: Same objection.

Whereupon said document was read in evidence by the witness, as follows:

469 The Master: Have you a copy of that?
Mr. Robbins: Yes.

Q. That also appears upon the regular records of a meeting of the Board of Directors of the Board of Trade held on July 9th, 1889?

Mr. Jenks: Same objection.
The Master: Objection overruled and exception.

A. Yes, sir.
Mr. Robbins: (Q.) On page 173 of the Record? Answer.
A. Yes, sir.

The Master: Objection overruled and exception.

Mr. Robbins: (Q.) What is the next action of the Board of Trade, respecting the collection or distribution of its quotations, as shown by its records?

Mr. Jenks: Same objection.
The Master: Overruled and exception.

A. March 1st, 1890.
Mr. Robbins: Are those minutes of the meeting of the Board of Directors of the Board of Trade held on that date?

Mr. Jenks: Same objection.
The Master: Objection overruled and exception.

A. Yes, sir.

Mr. Robbins: Well, I offer in evidence the resolution appearing on the records of that date.

Mr. Jenks: Same objection.
The Master: Overruled and exception.

A. Page 47.

Whereupon said document was read in evidence by the witness, as follows:

470 Mr. Robbins: (Q.) What was the next action of the Board of Directors with respect to those quotations, as shown by its records in your possession?

Mr. Jenks: Same objection.
The Master: Overruled and exception.

A. The 31st of May, 1892.
Mr. Robbins: (Q.) Are you now referring to the minutes of a meeting of the Board of Directors of the Board of Trade—
A. I am.
Q. —of that date, appearing in your minutes?

Mr. Jenks: Wait a minute; same objection.
The Master: Same objection; overruled and exception.

A. I am.
Mr. Robbins: (Q.) I will ask you to read from your records the resolution of the action of the Directors at that time, and at that meeting?

Mr. Jenks: Same objection.
The Master: Overruled and exception.

Whereupon said document was read in evidence by the witness, as follows:

471 Mr. Robbins: (Q.) Do you know whether these resolutions were put into effect after they were adopted by the Board of Directors?

Same objection; overruled and exception.

A. They were.
Q. Was the collection and distribution of these quotations entirely discontinued after March 1st, 1890?

The question was objected to by counsel for defendants as incompetent, irrelevant and not rebuttal. The Master permitted the question to be answered subject to the objection.

A. Yes, sir.

Q. For how long a period was the collection and distribution of these quotations discontinued?

Same objection; admitted subject to objection.

A. The distribution of these quotations—collection and distribution of these quotations was discontinued until the 31st day of May, 1892.

Q. Now, from the 1st day of April, 1890, to the 31st day of May, 1892, were the quotations of the Chicago Board of Trade collected or distributed, either by the Board of Trade of the City of Chicago, or by any other person or corporation with its sanction?

Mr. Jenks: Same objection; and the further objection that the question is leading.

The Master: Objection overruled. To which ruling of the Master counsel for defendants then and there duly excepted.

A. They were not.

Mr. Robbins: (Q.) I show you Defendant's Exhibit 1, being the clearing house sheet, and ask you to state what persons, whose names appear on that sheet, if any, are owners and operators of grain elevators in the City of Chicago?

472 Mr. Jenks: I object to that as not rebuttal, as incompetent and irrelevant to the issues in this case.

The Master: It may be answered, subject to the objection. To which ruling of the Master Counsel for defendants then and there duly excepted.

A. The Anglo-American Provision Company—

Q. That is, grain elevators, Mr. Stone?

A. Oh, grain elevators?

Q. Yes?

A. I got the wrong thing. The Armour Grain Company, the Bartlett-Frazier & Company, Carrington Hannah & Company, Charles Counselman & Company, A. E. Fowler & Company, National Elevator & Dock Co., Nye & Jenks Grain Co., Peavey Grain Co., Weare Commission Co.

Q. Are the persons you name operators of what is known as Class A or public warehouses in the City of Chicago?

Same objection; objection overruled and exception.

A. Yes, sir.

Q. Are there any other kinds of elevators, grain elevators in Chicago, except the class I have just referred to?

Same objection; objection overruled and exception.

A. Yes, sir.

Q. What are they called?

Same objection; objection overruled and exception.

[Q.] Well, they are commonly known as private elevators.
Q. Now, are there on this clearing house sheet any owners of these so-called private elevators?

Same objection; objection overruled and exception.

A. Yes, sir.
Q. You have not included them in your answer?
A. I have not.
Q. Do you know how many of that class of private grain elevators there are in Chicago?

Same objection; objection overruled and exception.

473 A. I do not.
Q. How many of the names of the persons, whose names appear on this clearing house sheet are proprietors of provision warehouses in the City of Chicago?

Same objection; objection overruled and exception.

A. About fifteen, I should say.
Q. Please give their names?

Same objection; objection overruled and exception.

A. S. W. Allerton, Anglo-American Provision Company, Armour & Company, Boyd, Lunham & Company, Continental Packing Company, John Cudahy, the Cudahy Packing Company, the Ellsworth & Cross Company, Hately Brothers, John Morrell & Company, Limited, Nelson, Morris & Company, North American Provision Company, Omaha Packing Company, Swift & Company.
Q. Are the packers, whose names you have just given, engaged in any other business in the City of Chicago than keeping provision warehouses?

Same objection; objection overruled and exception.

A. Not that I know of.
Q. Are they engaged in the packing business?

Same objection; objection overruled and exception.

A. Yes, sir.
Q. What?
A. Engaged in the packing business—they are.
Q. What is the business of the Albert Dickinson Company, if you know?

Same objection; objection overruled and exception.

A. It is a seed business—they are a seed business.
Q. Does their name appear upon this clearing house sheet?

Same objection; objection overruled and exception.

474 A. Yes, it does.
Q. Do you know whether they have a warehouse in the City of Chicago?

Same objection; objection overruled [—] exception.

A. Yes, sir.
Q. Mr. Stone, how many members of the Board of Trade were either expelled or suspended during the year 1900, by its Board of Directors, for connection with—dealings in differences in the market prices of commodities without a bona fide purchaser and sale of property for actual delivery, or making or reporting fictitious trades?

Mr. Jenks: Same objection; and that includes, that it is not in rebuttal, that it is incompetent and irrelevant in this case; that the action of the Board of Directors as to its members has nothing to do with the issues in this case, and whether they expelled one or many members is irrelevant here.
The Master: Answer subject to the objection. To which ruling of the Master counsel for defendants then and there duly excepted.

A. At least ten.
Q. How many of those were expelled, and how many suspended?

Same objection; answer admitted subject to the objection.

A. Three expelled and seven suspended.
Q. What were the periods of suspension?

Same objection; answer admitted subject to objection.

year
A. It ranged from one to five years.

Mr. Jenks: Will you let me see that, Mr. Stone?

A. Yes, sir; certainly. (Witness handing paper to Mr. Jenks.)

Mr. Jenks: Thank you. I want to move to strike out
475 the answer to the last question, for the reason that the question was not competent. The answer discloses the fact that the witness is stating just his own conclusion as to the causes of the suspension or expulsion.
The Master: Overruled. To which ruling of the Master counsel for defendants then and there duly excepted.

Mr. Robbins: (Q.) Mr. Stone, were you present during these trials that you refer to?

Mr. Jenks: I object to the question.
The Master: Objection overruled and exception.

A. I was.

Mr. Jenks: Now, I move to strike out the answer, because whether he was present or not, there is a record kept or should be kept by the corporation, as to the action of its Board of Directors, and the record is the best evidence.
The Master: Objection overruled and exception.

Cross-Examination

By Mr. Jenks:

Q. Mr. Stone, will you answer this question, yes or no; Was there ever a time within your recollection when reports or transactions on the floor of the Exchange room of the Chicago Board of Trade, during business hours, were not in some way sent out over the country, by telegraph?

A. I can't answer that yes or no. I can't tell how they were sent out or what people sent them out who were dealing on the floor. I know that there was no official dissemination of them at some time, and there was an official dissemination of them at other times. I can't very well answer the question yes or no, Mr. Jenks, as I can see.

476 Q. Don't you know it to be a fact that ever since you have been connected with the Board of Trade the market reports have in some way been sent out over the country by wire? A. I do not.

Q. Do you know that there ever was a time that in some way the market reports were not sent out over the country by wire? A. I do not.

Q. Do you know that the Western Union Telegraph Company ever ceased to send out the market reports from the Board of Trade, over the country by wire, before the year 1900?

A. I do not know.

Q. Do you know that the Postal Telegraph Cable Company, from the time it commenced to send out the market reports from the floor of the Exchange room of the Board of Trade of Chicago, ever ceased to send them out until the year 1900?

A. I don't know personally whether they ever ceased to send them out at any time.

Q. Have you this morning referred to any action of the Board of Trade or its Directors, which resulted in records being made which are not included in the Printed rules of the Board of Trade, which printed rules have been offered here in evidence? A. I have.

Q. Which ones?

A. The action of the Board of Directors in discontinuing the collection and dissemination of its market quotations, and the action of the Board of Directors in resuming the collection and dissemination of its market quotations; also the action of the Board of Directors of March 1, 1890, discontinuing the collection and furnishing—dissemination of quotations, and the action of the Board of Directors on the 31st day of May, 1892, permitting—

Mr. Robbins: That is all you need.

Mr. Jenks: Don't interrupt the witness.

The Master: Let him say when he is through. Complete your answer, Mr. Stone.

477 A. Well, also on the 31st day of May, 1902. Now, I have finished.

Mr. Jenks: (Q.) What was that on the 31st day of May, 1892?

A. I didn't know that I had the record, or else I would have referred to it.

Q. Merely, what was it about?

A. It was about authorizing the telegraph companies, the Western Union Telegraph Company and the Postal Telegraph Company to collect and disseminate market quotations for one year.

Q. Where is the one you referred to, suspending or expelling members?

A. I gave it to Mr. Jenks, the last I saw of it.

Q. The resolution, the action of the—

A. The memoranda.

Q. You gave me merely the names?

A. Well, that is all.

Q. Haven't you a record of that?

A. Yes, sir; I have a record of the action of the Board of Directors.

Q. In expelling or suspending— A. In expelling—

Q. —or suspending those members? A. Those members.

Q. That list includes the names of ten persons, as you say. Have any other persons since the commencement of the year 1900, been expelled or suspended as members of the board?

A. Yes, sir.

Q. How many in all? A. Eleven.

(The question and answer were read by the reporter.)

A. No, not how many in all. The former part of that question is, Were there any others than those ten? My answer is that these eleven is the number of those besides the ten, in addition to the ten.

Q. For what reason do you say these ten were expelled?

A. I think that was in answer to a question, how many were disciplined, either suspended or expelled for dealing in fluctuations in the market prices of commodities without a bona fide delivery. But that answer I gave to that question.

478 That is my recollection.

Q. That you understand to be the reason for their expulsion or suspension? A. Yes, sir.

Q. Were any of those ten expelled or suspended for having the same kind of dealings on the floor of the exchange room of the Board of Trade?

A. Well, were any of ten suspended or expelled for—

Q. Yes, for having that kind of dealings on the floor of the exchange room of the Board, or were all of the dealings outside of the floor?

A. They were for the violation of section 8 of Rule 4.

Q. Which does not apply to transactions on the floor of the Exchange room, does it?

A. Well, that is for the rule to tell itself, I guess.

Q. Were any of them expelled for having that kind of dealings on the floor of the Exchange room of the Board of Trade?

A. Well, they were expelled because—and suspended because they were found guilty of the charges made against them. The charges are on record.

Q. Were those charges for transactions which they conducted on the floor of the Exchange room of the Board?

A. Well, those charges will speak for themselves.

Q. Where are they? A. They are in the record.

Q. Where is the record? A. The record is here.

Q. You were present at the proceedings of the Board of Directors at the time each one of them was disciplined?

A. Yes, sir.

Q. Don't you know whether the charges that were made against those ten and each of them were for transactions on the floor of the Exchange room or were for transactions which they conducted outside of the Board of Trade?

A. I can offer the charges and read the charges. That is all I know about it, what the charges were.

479 Q. And you don't know what they were?

A. I can read the charges and produce the charges.

Q. Do you know hat they were?

A. I do not; I didn't commit them to memory; I would rather read them.

Q. Well, you have answered as to what the charges were in your answer to Mr. Robbins' question?

A. Well, I think so.

Q. Did you answer from recollection or from the record?

A. I will say that I answered the question according to my best recollection.

included

Q. Now the names given by you in the ten, are Charles R. and Albert O. McLain, Adolph H. Ruth, Henry O. Parker, James Nochol, Calvin A. Whyland, Stevel L. Robinson, and John N. Fiske, Lyman L. Kellogg and John Dwyer. Do you know whether either one of these persons was expelled or disciplined for any conduct or transaction by him on the floor of the Exchange room of the Board? A. No, sir.

Q. You say that you don't know?

A. I said I don't know.

Q. What was Charles R. McLain expelled for?

A. He was expelled for having been found guilty of the charges that were found against him.

Q. What were the charges?

A. I will read them from the record.

The Master: Can't you save time by stating the substance?

A. The substance, your Honor. The charges were for violating—at least, some of the charges—it was a very long charge, as I remember it; I have not seen it for a year. It was simply for violating the provisions of Section 8 of Rule 4 of the Rules of the Board, by dealing in differences in the prices of commodities dealt in on the floor of the Exchange without a bona fide purchase or sale for actual delivery.

480 Q. Is there any proof that these transactions were conducted by him on the floor of the Exchange room of the Board of Trade?

A. I shall have to be governed by the record of the case in the book.

Q. Mr. Stone, don't you know that not one of those men was expelled or suspended for anything that he had done on the floor of the Exchange room of the Board of Trade of Chicago? A. Don't I know that he was not?

Q. Yes? A. No, I don't know.

Q. Don't you know that he was, any one of them, expelled for anything that he did on the floor of the exchange room of the Board of Trade?

A. I know the fact that he was found by the Board of Directors guilty of the charges that were filed against him. [A.] I don't recollect the details of the evidence.

Q. Can you just as well answer the question?

(The question was read by the reporter.)

The Master: Do you know or don't you know? Answer the question.

A. I know he was expelled for—

The Master: Repeat the question again, please.

(The question was again read by the reporter.)

A. Yes, I know that it was for doing some things on the floor of the Exchange.

Mr. Jenks: (Q.) Which one? A. I don't know which one.

Q. What?

A. I don't know which—what particular item—

Q. No. Which man?

A. The McLains? I know the McLains were, the two McLains.

Q. What did they do there on the floor that they were expelled for? A. They violated—

481 Q. What did they do?

A. They pretended to make trades and didn't make them.

Q. Didn't make them on the floor?

A. They pretended to make trades on the floor, and didn't make them at all.

Q. Didn't make them on the floor?

A. Let me—I want to make myself clear.

Q. Now, Mr. Stone, you are an exceedingly smart man—

The Witness: Oh, no.

Q. (Continuing.) Don't you know that the McLains were expelled for pretending outside that they had made trades on the floor of the exchange room when they hadn't made such trades on the floor?

The Master: Repeat the question to him, and answer it yes or no.

(The question as read by the reporter.)

A. No, sir; I don't know.

Mr. Jenks: (Q.) Was anybody ever expelled from membership in the Board, or suspended to your knowledge, for making trades on the floor with other members, where he didn't intend to receive and pay for or deliver the commodity dealt in and for that reason was he expelled or suspended?

A. Well, I don't remember.

Mr. Jenks: Read the question.

(The question as read by the reporter.)

Mr. Jenks: You didn't read that question right. Strike out the last "he."

The question was read as follows: "Was anybody ever expelled from membership in the Board or suspended to your knowledge, for making trades on the floor with other members where he didn't intend to receive and pay for or deliver the commodity dealt in, and for that reason was ex-
482 pelled or suspended?"

The Master: In other words, in your recollection, was any member of the Board ever expelled for that act?

Mr. Jenks: On the floor?

The Master: On the floor, in your recollection.

A. Well, I can't say whether there were or not.

Mr. Jenks: That is all.

Redirect Examination

By Mr. Robbins:

Q. Mr. Stone, you read in the record two resolutions of the Board of Directors, one of the 14th day of May, 1888, one of the 9th day of July, 1888; I will ask you whether those resolutions were in any way incorporated into the rules of the Board of Trade?

Mr. Jenks: I object to that question as not rebuttal, as irrel-
re
evant and incompetent and not direct examination of anything brought out by me on the cross.

Objection overruled by the Master. To which ruling of the Master, the defendants, by their counsel then and there duly excepted.

A. They were not incorporated in the rules.

Mr. Robbins: (Q.) And should have been included in your answer to Mr. Jenks' question?

Mr. Jenks: I object to that for the same reasons and also for the reason that it [—] a leading question.

The objection was overruled by the Master. To which ruling of the Master, the defendants, by their counsel, then and there duly excepted.

A. Yes, sir.

483 The Master: The complainants close their rebuttal and you have no sur-rebuttal, Mr. Jenks?

Mr. Jenks: No.

The Master: And all testimony to be taken before the Master in Illinois, under the order of Court is closed?

484 The United States of America, Southern District of Ohio, Western Division.

Board of Trade of the City of Chicago, a corporation, Complainant,
vs.
The O'Dell Commission Company et al., Defendants.

State of Illinois,
County of Cook—ss.

I, Max H. Whitney, of the City of Chicago, County of Cook and State of Illinois, Special Master in Chancery, to whom the above entitled cause was referred by the Honorable A. C. Thompson, district Judge of said Court, an the 19th day of July, A. D. 1901, for the purpose of taking evidence relative to a certain motion by Complainant for a temporary injunction, as set forth in the order of reference, a copy of which is hereto attached and made a part hereof, do hereby certify:

That on the 19th day of November, A. D. 1901, at the hour of 2:30 o'clock in the afternoon of said day, the parties to said cause appeared, by their respective solicitors, before me, at my office, in Room 337 Monadnock Block, in the City of Chicago, County of Cook and State of Illinois, pursuant to said order of reference hereinbefore referred to; that

Henry S. Robbins, Esq., apeared as solicitor in behalf of the complainant; and that

A. B. Jenks, Esq., and Thomas F. Shay, Esq., appeared as solicitors in behalf of the said defendants.

485 I do further certify that on said last mentioned date the complainant, to maintain the issues upon its part, introduced the evidence of sundry witnesses, as hereinbefore set forth, and continued the same from day to day thereafter, as noted, both in chief and in rebuttal, said evidence to be used upon the trial of said above entitled cause, now pending and undetermined in said Court.

I do further certify that each and every of the said witnesses, whose names appear in the foregoing transcript of evidence, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; that the testimony then given by each of said witnesses was reduced to writing in the presence of said witnesses, by means of shorthand, and afterwards transcribed upon the typewriter, and the foregoing is a true and correct transcript of the testimony so given by each and all of said witnesses, as aforesaid.

I further certify that the signatures of each and all of said witnesses to the foregoing depositions were, by stipulation and agreement of counsel, duly waived; and it was stipulated and

agreed by and between counsel for said respective parties that said depositions may be read and used upon the trial of said cause with the same force and effect as if the witnesses had signed their respective depositions, and had again made oath to them.

I do further certify that I am not of counsel for, or in any way related to, any of the parties to said cause; nor am I in any way interested in the outcome thereof.

I do further certify that my fees for taking, certifying and returning said depositions are $....., which
486 said amount has been paid to me by counsel for said complainant.

In Witness Whereof, I have hereunto affixed my hand and seal this 11th day of December, A. D. 1901.

.....
Special Master in Chancery.

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488 United States of America,
State of Illinois—ss.

In the United States Circuit Court, in and for the Southern District of Ohio.

Board of Trade of the City of Chicago, a corporation,
vs.
O'Dell Commission Company, a corporation,

Depositions.

The depositions of witnesses called on behalf of the defendant before Max Whitney, special master, of said court, on November 26th, 1901, and succeeding days thereafter, as by the adjournments herein noted, at the Monadnock Building, in the city of Chicago, state of Illinois, pursuant to notice hereto attached.

Mr. Henry S. Robbins, appearing for complainant.
Mr. A. B. Jenks, appearing for defendant.
Mr. Harkless and Mr. Shay, of counsel for defendant.

2 o'clock P. M., November 26th, 1901.

Parties met pursuant to adjournment.

C. D. French, called as a witness on behalf of the defendant having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

Q. Mr. French, will you state your full name?
A. Clinton D. French.
Q. Where do you live? A. Kansas City.
Q. Missouri? A. Kansas City, Missouri, yes, sir.
Q. How long have you lived there? A. 24 years.
Q. Were you ever in the grain and commission business there?
A. Continuously, from the time I went there up to about a year and a half ago.
489 Q. Under what name or style did you do business?
A. The first year it was under the name of Threlneld, French & Company. After that, for five years under the name of French Brothers, for a number of years after that under the name of Franch Commission Company and back again to French Brothers.
Q. How long was the business conducted under the name of French Brothers the last time?

A. The last, time, well I presume about eight years, from 1892 until 1898 or 9.

Q. From 1892?

A. Yes, 1899—from 1891 to 1899, perhaps.

Q. From 1892 down to 1899 how extensive a business did you do?

A. Well, it would aggregate over a hundred millions a year.

Q. A hundred millions of what? A. In options.

Q. Options in what? A. Purchase and sales.

Q. Of what?

A. Of wheat, corn and provisions thrown into bushels.

Q. Did you, in conducting that business, transact it in any manner on the Chicago Board of Trade?

A. Almost exclusively. We did business in other markets, New York, St. Louis and Kansas City, but the principal part of our business was on the Chicago Board of Trade.

Q. In what manner was it done on the Chicago Board of Trade? A. You mean in what manner we sent out orders?

[A.] No, who did the business on the floor?

A. Well, that I could not tell you, the orders were sent to houses who were members of the Board of Trade in Chicago, here to their offices in Chicago, and their execution was supposed to be made through their brokers on the floor.

Q. What houses did you deal through, for instance, on the Chicago Board of Trade?

A. Well, I can hardly recall all of them, but we did business for a great many years with M. S. Nichols & Company, and with Lamson Brothers, with Baldwin & Farnham, with Swartz, Dupee, with F. G. Logan and numerous other houses.

Q. In what manner was the business conducted be-
490 tween your house and the others?

A. Do you mean,—the manner they did business with us?

Q. Yes?

A. Our orders were mostly, in fact, wholly, by the telegram. The answers to these communications were in telegraph. Early in the business, along back in the '70's and 80's especially in the 70's, we used the public wire for communication between each other and confirmation of transactions were mailed at the close of business each day.

Q. And afterwards, when you ceased to use the public wire, what then?

A. Our houses used the first private wire from the west, and perhaps for 12 or 15 years uninterruptedly we had a private wire of our own from Kansas City to St. Louis part of the

time, part of the time directly to Chicago, and also to New York City, and therefore for the last 15 years up until we quit business we used a private wire.

Q. In the commencement of a trade on the Chicago Board of Trade, what was done covering the whole time that you were in business?

A. Well, let me understand the question. You mean, how did we send an order and in what way we received it?

Q. Yes, what was the commencement of the deal?

A. Well, we had our office in the Board of Trade Building in Kansas City, and before we had a private wire, we would use the public office, go into the public office and send our message right in our office and send it to them, perhaps to M. S. Nichols & Company, Chicago, ordering them to buy or sell as the case might be, a certain quantity of the option that we were handling or that we wanted, May or January or whatever month this option was for, so we could buy or sell, it didn't make any difference. We could sell before we bought or we could buy before we sold.

Q. Then what would be the best thing following that message?

A. Well, if this order was limited to the market and
491 it was obtained, the answer came back promptly stating that it was executed, and then we had an account, you know, we kept money on deposit with this house covering whatever orders we might send. If we did not we supplied them with immediate funds to keep our account covered with sufficient margins to protect these deals.

Q. Then with reference to that transaction, what was the next thing done?

Mr. Robbins: So far as you know?

A. So far as I know that transaction was entered to our account and we controlled it, so far as that end was concerned, until we got our customer—or until some other customer sold or made the opposite deal on the same quantity of stuff, then the house in Chicago would render us an account of sale, that is account of purchase and sale.

Mr. Jenks: Q. What would the house in Chicago telegraph you?

A. Telegraph that they had executed the orders received, and then that day they would mail us—

Q. What else would be in the telegram, would it state the price? A. Yes, sir.

Q. Then what would be the next that you would hear from it?

A. The next would be the confirmation and the account of purchase and sale showing whatever loss or profit existed in this transaction.

Q. Then so far as that transaction was concerned, when was it settled and ended?

A. We did not preserve the identity of transaction for the local customer, a man stepped into our office in Kansas City and ordered the purchase of 10,000 bushels of wheat; we wired the Chicago house for them to buy it. If in two minutes after we executed this order another man should step into our office in Kansas City and order the sale of the same quantity of stock for the same option, we wired this order like we did the
492 previous one to the Chicago house. They executed it, were

So far [the] the Chicago house knew, we only in the transaction and they rendered the account as well as all our accounts—

Q. To you?

A. To us, and our account with the Chicago house would be closed in so far as that transaction was concerned, but with us, we would have two customers in the market, one would be short 10,000 bushels of wheat, the other would be long, but the identity of the deal we never preserved.

Q. In all these option deals, that you sent to the Board of Trade houses, were you acting as commission man or how?

A. Commission man.

Q. Then you had customers in the country, you were acting for customers in the country? A. Yes, sir.

Mr. Robbins: Mr. Jenks, may I have it noted on the record there the objection to this evidence on the [the] ground that it is to show that this witness has had no transactions of any kind for more than a year and a half now; I don't care to argue it?

Mr. Jenks: I will show that before we get through that they do business the same way now.

Mr. Robbins: I know, but I want to preserve a point, that is all.

The Master: Yes, the objection may be entered.

Mr. Jenks: How many different customers did you have there; in other words, I want to get at an idea of the extent of your business?

A. Well, that would be impossible for me to state. Our business was extensive and large and covered a long period of years.

Q. And you had on an average, how many customers, say, per year?

A. Well, it would amount into the hundreds, I could not tell you, that is, each year. I could not state definitely without looking at memoranda. I never looked up that feature of the matter. I know more about the amount of stuff we handled than I do about the number of customers.

493 Q. Now, as to these customers that you had, give us the course of the dealings with them so far as these dealings were had on the Board of Trade?

A. I don't believe I understand.

Q. You have given the course of dealing between yourself and a member of the Board? A. Yes.

Q. Now, I want the course of dealing between yourself and the customers as to those transactions?

A. Well, the customer would—wanted to get into the market on the long side. He wanted to invest believing in the merit of wheat or corn or pork, he would tell us what quantity of provisions he wanted to buy and how much money he wished to deposit, as a margin on it, and at what price he was willing to go into the market and we would place his order with the Chicago house and for convenience sake, the Chicago house would want to eliminate so much bookkeeping would keep the whole account direct with us, because we assumed the risk and liquidated to these customers for the margin, and if we did not get the money from the customer then we were liable to the Chicago house for the money, it was no risk of theirs, and for that reason, the identity, I say, of the transaction was not preserved in the Chicago market, but we preserved the identity on our books so far as the individual customer was concerned and he was long or short from the time of the execution of his order until he himself ordered it closed.

Q. Well, now, suppose the order of the customer was, to purchase 10,000 bushels of wheat for December delivery, what order did you send to the Board of Trade house?

A. I would state, "F. G. Logan, Chicago," write a telegram "Buy 10,000 bushels of December wheat."

Q. Fixing the price? A. Not unless he had fixed it.

Q. And if your customer fixed it, then what?

A. Of course we fixed his price.

Q. And then if the customer came in and wanted to close that deal, what would he say to you?

494 A. He would tell me to close his deal or to sell him 10,000 bushels of wheat, December wheat.

Q. Then what would you do on that order?

A. I would wire this same house the reverse of what I sent when the purchase and sale—the same quantity of stuff.

Q. Then when you got the report from the Board of Trade, house, what did you do so far as the customer was concerned?

A. I rendered him the account of sale, the amount of purchase and sale of the transaction.

Q. Containing what?

A. What the transaction cost him, his profit there and then deducted his losses, if it were a loss, from the margins that he had in my hand.

Q. Did you deduct anything from the profit?

A. Always the commission, yes sir.

Q. What commission did you charge to your customer?

A. During the last ten years it was an eighth. Previous to that for some of the time, it had been a quarter.

Q. What does a commission of an eighth mean?

A. It means one-eighth of one per cent a bushel.

Q. With the Board of Trade house did you put up margin?

A. Yes sir.

Q. At what rate?

A. Why they usually required about two cents a bushel on the whole line of stuff sometimes not so much, sometimes more.

Q. And between you and the Board of Trade house was there any commission charged?

A. Part of the time whole commission was charged and half of it rebated; part of the time it was only charged one sixteenth, one-half of the eighth.

Q. Charged by whom?

A. By the Chicago house. Most of the time it was charged direct, one-sixteenth.

Q. Was that the usual course of business between you and the Board of Trade house? A. Yes sir.

[—] The whole transaction of deals, as you have stated, was the usual course of business?

495 A. Yes sir. Well, the Chicago house may have required a greater margin from some houses than they did from us; I don't know about that. I don't know if they required as much.

Q. I am only speaking of the usual course of dealing.

A. The mode of business.

Q. Between your house and the Board of Trade house and your house and your customers?

A. I presume that was the general custom, it was so far as I know.

Q. I am only speaking of your own house?

A. Oh, it was always the custom, yes.

Q. In your dealings, which you say were extensive, was there any such thing known as stop orders? A. Oh, yes sir.

Q. What does a stop order mean?

A. A stop order means a man wants to limit his loss at that price.

Q. Then if he does, what would he say to you?

A. That he wants to limit his profit in case that would be—simply says, "I don't want to lose any more than so much, a cent a bushel, two cents a bushel on that wheat, and you must stop the loss there if it declines." Then I send to the Chicago house a stop loss order.

Q. In what manner?

A. Just by giving them, say stop that 20, 10, 40, 50 or 100,000 bushels of May wheat at a certain price; that was an order to them to close that much wheat at that price not to stay with it any longer, to sell it there; that was to sell it there if we were long for instance, the party issuing the stop order was a holder of 100,000 bushels of May wheat, and he wished to place the stop at two cents below, we would simply state, stop the decline on 100,000 bushels of May wheat at a certain price at 2 cents below, whatever it was you know, give the price.

Q. And after getting that order, what did the Board of Trade do?

A. If the market declined to that point, they closed it.

Q. Closed it how? A. Closed it on the market.

Q. And then what did they do?

A. Rendered an account sales.

496 Q. To whom? A. To me.

Q. And that account would be an account of purchase and sale?

A. Yes, they would take the oldest transaction of their books with me and close this, or if they did not happen to have the transaction they would just simply send me notice of sale of that much stock, it worked the same as that, whether we had orders in or not.

Q. But if they had an old transaction of the purchase of 100,000 bushels? A. They closed it against that.

Q. And they sold 100,000 bushels for the same delivery then they would send you what?

A. They would send me an account of purchase and sale.

Q. Showing the difference?

A. Showing the loss or profit; there would be a loss in a case of that kind.

Q. And that loss would be made up of what?

A. Would be made up of the difference between the price at which they bought it and the price at which they sold it on the stop order and their commissions.

Q. And the purchase price and the sale price would be the market price at the time? A. Yes sir.

Q. So that what the loss would be would be the difference?

A. Yes sir.

Q. Between the purchase price and the sale price?

A. Yes sir.

Q. What do you mean by taking it out of or setting it opposite the oldest account which they had?

A. I mean that we were brokers, and not speculators; that we were executing orders for others, and not for ourselves; that we had lots of transactions for numerous people, and they were getting the trade in our name and not in the name of these numerous people, and necessarily we had lots of transactions on these people's books, and it was one of the rules that we required and that they also required, or should necessarily, in order to get the oldest transaction out of the way so as
497 to keep closer up with their business, generally, you see, with their books, and therefore if they executed an order to-day they would close that against the oldest transaction, that was as a general proposition, as I have told you here, the identity of the transaction in this manner in so far as we, the broker, and they were concerned.

Q. How did the Board of Trade finally close up all of the transactions with you, these speculative transactions, where you were acting as commission man or broker for your customers? A. Well, the way we would do that—

Mr. Robbins: That is not the question.

Mr. Jenks: How did the Board of Trade do it?

A. Why they would do it in our transactions of sales so much, we would figure on our books the amount of stuff that we were long, the amount of stuff that we were short for these various customers, if at the footing of these customers we were long a million bushels or more, than we were short, we simply telegraphed them to buy or sell that difference, that let us out of the market so far as the Chicago house was concerned. Then our dealings would be with our customers direct, and not with the Chicago house any more so far as those transactions were concerned. If, however, we wanted to render an account sales to all of our customers and close up their business, as well as with the Chicago house, we would send every transaction into them and the whole deal, both long and short would be closed, and account sales rendered as to all of the customers.

Q. And settled in what way after the account of the purchase and sale was made?

A. By paying them what was due them by paying them their profits and deducting from their margins their losses.

Q. Then the whole transactions were closed up by merely paying or receiving the difference in the market price?

A. Yes sir.

498 Q. In all of these transactions that you had with houses, members of the Board of Trade, was there ever any of the commodity bought or sold, delivered to you or delivered by you to a member of the Board of Trade house and paid for either way?

A. We never delivered any, except when we sold—that is in the options we never delivered any.

Q. Did you ever receive any? A. Yes but very little.

Q. What per cent of the whole trades would you receive any of the commodities?

A. Well, it would be a such a small per cent of it I would not know hardly where to place it.

Q. How frequently in the course of a 15 year business did you receive any of the commodities which you had bought from a Board of Trade house?

A. Well it was an occasional thing that the customer would want to buy cash stock.

Q. I am speaking of the speculative trades that you had?

A. Well, by buying an option, there was one or two instances in the history of our business where men wanted to accumulate a large line of cash stuff and they would buy the cash stuff through us, and also the month just ahead; for instance, now in November, they would be buying December wheat when they wanted it delivered they would buy it that way. In those instances we had some stuff delivered to us, but those instances were not numerous.

Q. Can you fix the number of customers that you had who have received anything from you?

A. Well, I think it was only two or three during the whole time.

Q. And two or three out of how many?

A. Well, thousands.

had men

Q. Only two or three out of thousands of individuals?

A. Yes sir.

Q. Is that right? A. Yes sir.

Q. Will you state, as nearly as you can, the extent of the business per year of purchases, and the extent of the deliveries on those purchases?

A. Well, you mean in the options, buying and selling
499 futures? A. Oh, yes.

Mr. Robbins: You refer to his transactions?

Mr. Jenks: Yes.

Mr. Robbins: His business?

A. Well, you referred to the—to my transactions in the Chicago market, that is the order we sent here?

Mr. Jenks: Yes.

A. Yes I don't believe that I could fix it except that it was very small. I don't think that we had as much as 200,000 bushels of stuff delivered to us in 15 years.

Q. And during that time, how much stuff did you contract to purchase?

A. Well, as I stated a while ago, our business, I think, must have run about a hundred million a year. Of course, early in our business it did not run that much, and perhaps there were times when it ran more than that. There were single days when we handled at least eight millions of stuff in a day, but these were exceptions, you know, those were rare things for us.

Q. Is there any way that you can state the per cent of commodities received by you compared with those you had contracted to purchase?

A. No, I could state what to the best of my knowledge and belief is the case, but of course I could not feel that I was accurate in so delicate a matter; it was so minature compared to what we did handle that I would say that in one two-hundredths of one per cent, may be, I might put it at one two-hundredths of one per cent.

Q. At the time of sending orders to a Board of Trade house to make a purchase of any commodity for future delivery, did you know at that time whether you could close that trade out in any other way than by receiving the commodity?

A. Yes sir.

Q. What was the understanding or course of business with regard to that after making a purchase? What was the understanding or course of business as to closing that trade
500 out.

A. The understanding was that if we had 10,000 bushels of wheat bought from a Chicago house on the Board of Trade today, and we wanted to close it out tomorrow we could do so and get our money and that ended the transaction so far as we and they were concerned.

Q. Get what money?

A. Get our profit, if we had a profit, or pay our loss, if we had a loss.

Q. And the profit or loss would be made up of what?

A. Made up of the difference between the price at which we had bought and the price at which we had sold.

Q. Out of all that you ever bought on the Board of Trade, did you ever pay for anything? I mean did you pay for any of the commodities that you bought or contracted to buy for future delivery?

A. Well, as I told you a while ago, yes, there was that percentage that was so small that I did not hardly know how to figure it; we did receive stock and pay for it.

Q. Stock? A. Received the warehouse receipts.

Q. For grain? A. Yes sir.

Q. Were you ever on the Exchange floor of the Exchange room of the Board of Trade? A. Yes sir.

Q. Do you know what they mean by pits, grain pits?

A. Yes sir; that is I suppose I do; I have seen them in the pits.

Q. Do you know the difference between speculative trades and cash trades? A. Yes sir.

Q. Do you know where on the floor of the Exchange room of the Board of Trade the speculative trading is conducted?

A. No sir, that is I have—I only know this, that I have seen these stands in here where they had the samples and sell their cash wheat, but I have never negotiated in the cash business on the Board of Trade, or did any business myself there, and never was there but a few minutes at a time, and I have seen the men—

501 Q. But I asked you about the speculative business and not cash business.

Mr. Robbins: He says he don't do any business there himself.

Mr. Jenks: He has been there. Read that former question.

(Question read as follows: "Do you know where on the floor of the Exchange room of the Board of Trade, the speculative business is conducted?"

A. Well, I know where they did conduct it when I was there yes sir.

Q. While you were in business, were you in receipt of market reports from the Chicago Board of Trade? A. Yes sir.

Q. I mean by that continuous market reports?

A. Yes sir.

Q. Do you know from what place on the floor those continuous market reports are gathered?

A. No sir, I only know how we receive them and I may have known at the time how they got them, but I would not attempt to say now.

Q. So far as your customers were concerned, in that 15 years business, how many of the customers have received or delivered anything in the transactions that you had for them on the Board of Trade of Chicago?

A. So far as I know there were none that delivered any stuff that they sold for future delivery. There were a few that received stuff that they bought with the exception of receiving and keeping and holding to sell as cash commodity and sold it that way.

Q. Did you ever, in your business, deal in cash commodity?

A. Oh, yes sir.

Q. For yourself or for customers?

A. For ourselves and for our customers, we were handlers all the time of cash stuff.

Q. In these dealings for cash commodities, what was done with the commodity?

A. It was shipped to the market that we bought it for, or to the people we bought it for, we bought a good deal of corn, millions of bushels for R. S. McCormick & Company of
502 Baltimore and St. Louis, shipped very largely of cash corn.

Q. Were those transactions a purchase by you or sale to them of the cash commodity ever conducted on the Board of Trade of the City of Chicago?

A. Those transactions where we bought our own grain in the country we would sell frequently against it in the Chicago market, in fact often.

Q. Now, what do you mean by selling against it?

A. Well, if we could figure out that we could buy a hundred carloads of wheat at some point in Kansas or a hundred cars of corn, or [ever] ten or twenty at a profit, figuring the freight rate that existed by sending it to Baltimore, and did not care to take risks, we would sell in Chicago the same amount of wheat or corn that we had bought at this Kansas point or at Kansas City, and then ship our cash commodity to Baltimore, New York, St. Louis or Kansas City, as the case might be, and when it arrived at its destinations, we would sell it on the market and buy in the wheat we had sold out or the corn in the Chicago market, thus hedging ourselves during the transit of this corn or wheat.

Q. Now that is what you call hedging? A. Yes sir.

Q. At what place would you buy it in where you had sold it on the Chicago market?

A. We would have to buy it in where we sold it. We could not close it unless we did.

Q. Well, where would you?

A. Well, we sold it in Chicago—if we sold it in Chicago, yes sir.

Q. In the Chicago market? A. Yes sir.

Q. That is, on the Board of Trade? A. Yes sir.

Q. Now in these transactions, where you had the actual stuff which you intended to ship to some other place and you sold the same quantity of stuff, was that sold for future delivery on the Board of Trade?

A. No, we would sell it for—if we were early perhaps in the month, for instances if this was the first day of December, or the second day of December, and we could sell to better
503 advantage December wheat and sell it for money than we could January or February wheat, we would sell perhaps that particular article, we would choose the option that offered the best advantages.

Q. What do you mean by option?

A. Of course, with our deal—I mean the month for which we were making the transactions, I called for instance—we called December—the December option is the December option, the January option is the January option. [Q.] Each month is a separate option we call it.

Q. Whenever you would sell as a hedge and you would ship your commodity east or south or anywhere, and sell the actual commodity there, what would you do with this contract of sale that you had made on the Board of Trade?

A. Well, I just told you a while ago that we would buy it in the moment we got out of our cash stuff.

Q. How would you close the transaction on the Board of Trade or with the Board of Trade house?

A. Well, as I described the transaction a while ago, they would render us an account of purchase and sale showing our loss or profit.

Q. And the statement would be made up of what?

A. By payment of the difference between the purchase and sale price, or deducting the difference if it is a loss.

Q. Do you know any other people west in Kansas City or anywhere else, who were engaged in the same kind of business that you were during the 15 years that you were in business?

A. All grain men are engaged in the same business.

Q. Mr. French, during the whole 15 years that you were conducting that business, in what manner did you receive the market reports, the continuous market reports?

A. Well, it was different—in different ways.

Q. Commencing with it.

A. Well, I don't know that my memory can detail the different manner in which they were received, they were so
504 varied, sometimes we received them by telegram; at one stage of the business we received telegrams from our commission house in cipher; at another stage perhaps for a month or a few months, and almost perhaps a year, we would get them on tissue; some telegraph company would write them out for the different grain men in Kansas City and send us tissue copy every few minutes of the market: then came the gold stock ticker; that is the ticker that they send out from the Central office in Kansas City. For instance, the Western Union Telegraph Company would get their markets from some source and then put them on the ticker; that has been the greatest—run the greatest number of years, that system of getting them, perhaps the largest number of those 15 or 20 years, I guess it is 20 years—30 odd years, it is more than 15 years, covered by that ticker service.

Q. Did you ever get them direct by wire to a Morse instrument in your office? A. Yes.

Q. Covering what period?

A. Well, I don't remember now, perhaps a year or so; we got them coming to some kind of an instrument; I say Morse instrument, coming to some kind of an instrument in the room and a telegraph operator had to take them off.

Q. What have the market reports sent out from the Board of Trade in the City of Chicago to do with the business of the country in grains and provisions so far as the conducting of that business and the fixing of prices for purchases and sales are concerned? A. I don't get that.

(Question read.)

Q. In other words, what I want to get at is, whether having those market reports for a great number last past, the business of the country has in any way conformed to the mode of receiving the market reports from the Board of Trade in the City of Chicago in the conduct of that business? Whether they could do the business just as well without the [merket] reports,
505 or whether the market reports have become a necessity to the business?

Mr. Robbins: Wait a minute. I object to that as leading and as not competent, calling for the opinion of the witness.

The Master: Have you qualified him as an expert, Mr. Janks?

Mr. Jenks: Well, I should think so, he has been doing business for 15 years.

in

Mr. Robbins: I one point, Kansas City.

The Master: I doubt if you have qualified him sufficiently to answer that question as an expert.

Mr. Jenks: Mr. French, do you know whether the receipt of market reports from the Board of Trade of the City of Chicago has anything to do with the purchase and sale of the commodities which are dealt in where such purchases and sales are conducted out in the country?

A. I don't know that I can answer that question intelligently.

Mr. Jenks: Well, I will withdraw the question.

Q. Mr. French, as a rule, in the past 15 years, has there been any difference in the speculative price of a commodity to be purchased for future delivery and the cash price of the same commodity to be delivered and paid for at the time?

A. Oh, yes, that is varying all the time.

Q. Which is varying?

A. Why the difference is varying; sometimes the option is carrying charges or about carrying charges; it never can go much above carrying charges, above the cash article, but again

the cash article is away above the option, there is no limit at which the cash price can go above the option but there is a limit at which the future can go above the cash, in the same grade of stock, and that is carrying charges, insurance and commissions.

506 Q. Which is usually dealt in by speculators in the country, the article for speculation, or the article for cash?

A. Well, according to my view—you are not asking for my views. I suppose if you say articles for speculation you say the option, the future option?

Q. Yes.

A. It all seems to be as speculation. Anything that a man buys he takes his chances on its going up, and down. Why the option would be the general mode of operating.

Q. And in what quantity, how much would the option trading exceed the cash trading?

A. Well, so far as my experience—

Mr. Robbins: The witness has not qualified to pass judgment on the business of the country.

Mr. Jenks: So far as this business was concerned.

The Master: He is limited to his own business as I understand it.

A. So far as my business is concerned, the percentage of so option trading or trading for future months would be very much larger than the cash stuff, oh, perhaps it would be 95 per cent of it or 90 per cent.

Cross-Examination

By Mr. Robbins:

Q. Are you a member of the Board of Trade?

A. In Chicago?

Q. Yes sir. A. No sir.

Q. Ever been?

A. Why, I don't know that I have ever been a member personally. We have always been the owner of a membership until—Why, yes, certainly, yes, I was a member up until about a year ago.

Q. Where is your business? A. Kansas City.

Q. Have been all the time that you have been referring to?

A. Yes sir.

Q. You have never done any business yourself on the Chicago Board of Trade except by sending orders to houses here?

A. No, I never did any actual business on the floor; did not go on the floor in person for business purposes.

507 Q. You spoke of stop orders being sent to sell at a price. Suppose that the price mentioned in the stop

order was 73 1-2 and the market closes at 74 one day and opened at 72 the next on the Board of Trade, what would be the price at which the transaction would be carried out?

A. Well, that would depend on the arrangement you had with the Chicago house. At one time we had an arrangement with the Chicago house whereby they guaranteed to get the stop order in that instance it was closed at the price at which it was given, but when I did business with Baldwin & Farnham and F. G. Logan, they refused to enter into that part of my wishes and that transaction would be executed at the opening next morning.

Q. Your stop order to be executed at the best price they could nearest the price that you gave them on the open market?

A. Yes sir.

Q. What is the name of the house that you had arrangements with that guaranteed stop orders?

A. I could not tell you now. I know that we had—it seems to me that Kennett & Hopkins used to guarantee stop losses, but I can't be positive about that. We did business with so many different houses and so many of them failed that we were doing business with that I could not be accurate.

Q. Are you a member of the Moss-French Commission Company of Kansas City? A. I am not, sir.

Q. Have you ever been? A. No sir.

Q. Not interested in that company? A. No sir.

Mr. Jenks: What company is that?

A. The Moss-French Commission Company, it is a nephew of mine and my old—

Q. All right, never mind.

Mr. Robbins: Did the Chicago Board of Trade—

A. Say, let me correct myself, right now.

Q. Yes.

[—] You know I have got mixed there. When you
508 asked me about the membership and I told you that I parted with my membership a year ago, that membership I parted with a year ago was a membership on the Kansas City Board of Trade. I knew I sold a membership. I got to thinking it was in Chicago, but it was not Chicago, and the only interest I have had in a membership in the Chicago Board of Trade might have been to have owned one that was in the name of some one in my office for the rules required us to hold a membership at one time, and then it was that we provided ourselves with one in some one of our names, but whose name it was in I don't know whether it was mine or my brother's, or somebody else, and I can't say that I was ever a member of the Chicago Board of Trade.

Q. You can't say that you were ever a member?

A. Yes, it was the Kansas Board of Trade, the membership of which I sold a year ago. The reason that I was confused on that point was that the membership was recently advanced to $3,000 and I thought that could not have been the Kansas City membership.

Q. Did the Chicago Board of Trade send out the continuous quotations—its continuous quotations between May, 1890, and May, 1892?

A. There might have been some period along there when the quotations were interrupted for awhile. I could not say; I know that there were interruptions at some periods, but what period it was I don't know, I could not tell you now.

Q. You do know that for a time about that time the Chicago Board of Trade suspended the sending out of quotations?

A. I do know that at some period along in my business in Chicago that there was trouble about quotations, but just what caused that trouble and just how it was, I don't remember now.

Q. Now answer the question. Read it.

(Question read as follows: "You do know that for a time about that time the Chicago Board of Trade suspended the send- out of quotations.")

A. I do know that there was an interruption in the
509 quotations somewhere, but I don't know that it was about that time, probably it was.

Q. Do you know how long it was for? A. No sir.

Q. It was for some months, was it not?

A. I hardly think it was so long, but it might have been.

Q. During that time, did the business of the country in grain proceed as before? A. Why yes, I think so.

Q. The grain business did not stop. Was there anything different in the grain business during that time than the time immediately preceding?

A. There was a period later when there was an interruption in the quotations and a good deal of the business was scattered to Minneapolis, St. Louis and New York, but how long that lasted I don't know.

Q. Well, during that time, that the business of the country —how long was it affected, lessened, or hurt by the fact that the quotations were not sent out?

A. Well, I could not tell you, I don't know.

(Question read.)

A. Our business was hurt when the interruption took place in the quotations, because it bothered us about getting orders

you know on the Chicago market, I don't know about the general business outside of grain.

Q. What were the quantities you dealt in on the Board of Trade in these orders? What was the minimum quantity?

A. 5,000 bushels.

Q. 5,000 bushels of grain?

A. Yes sir, or at periods we were not restricted to 5,000 bushels and could execute 2,000 bushel orders in wheat and 50 barrel orders of provisions but it was only, occasionally that these opportunities were given us. The members when the rules got a little tight and they would tell us that they
510 could not now execute 2,000 bushel orders, but when they would relax their rules a little, they would take them again.

Q. You speak of hedging. Did you, while you were in business, did you know of any elevator man or other people, owning cash grain in Kansas City who resorted to this hedging?

A. Oh, yes.

Q. Through you? A. Yes sir.

Q. Well, now, let us see if I can understand that. The Kansas City Elevator man would have the grain in store in his elevator and desire to guard against the depreciation in the price, he would send an order through you to the Chicago Board of Trade and sell for the future month the quantity that he had on hand, is that right? A. Yes sir.

Q. That is what you speak about as hedging?

A. That is one manner of hedging, yes sir.

Q. That is one manner of hedging?

A. Yes that is one individual that hedges.

Q. Now isn't there another individual out in Kansas City, who hedges; take the packers out there? A. Yes sir.

Q. That buy hogs and while they are being made up into pork and lard and the other products they sell for a future contract on the Chicago Board of Trade against the hogs to protect against the loss in price while the hogs are being manufactured into products, is that right? A. Yes sir.

Q. Do they do that through your house? A. Yes sir.

Q. That is quite a frequent thing, was it? A. Yes sir.

Q. Now corn is pretty generally cribbed in the country is it not, in the fall and carried through the winter? A. Yes sir.

Q. And people in the country buy the corn and hold it in the cribs during the winter? A. Yes sir.

Q. Then to protect against a decline in the price of corn before it is brought into the market or before it gets into condition that it is dry enough to send to the market, the
511 owners will sell for future delivery on the Chicago Board of Trade? A. Yes sir.

Q. Was that business done through you? A. Yes sir.

Q. Now what other kinds of persons hedge through you?

A. Well, the kind that I described a while ago.

Q. Well, I mean other than those that have been mentioned, do you recall any?

A. Well, I don't know but what you have pretty well covered the field there; of course there would be a great many of those kind of men when an option—when a far off option was reasonably high, a man, a farmer, sometimes sold his corn. For instance I have known this kind of, you might call it hedging, there is a farmer raising a large field of corn, that is a great many thousand acres, perhaps, of corn to market. A good many thousand bushels and he believes that his corn is going mature sufficiently early to get it into the early market. He will sell for December corn of he thinks he can make that grade.

Q. Well, that is on the corn? A. Yes sir.

Q. While it is growing?

A. Yes sir, and you might call that a hedging, he is hedging against the growing corn.

Q. Well, all these transactions that you call hedging, so far as they were made through you, were made in the same manner that you have described here, that is, the orders were sent to the broker on the Board of Trade to sell for the future month and the trade was made upon the Board of Trade?

A. That is in the conducting of my business, yes sir.

Q. And the person who had the stuff, or owned it, would either ship the stuff to Chicago, or would [see] it somewhere else where he could get a better price and take off his hedge in Chicago? He would ship it to the most inviting market, yes sir.

Q. When he was ready to ship? A. Yes sir.

Q. At the time he would make the sale, he would
512 have on hand the property that he sold?

A. Yes, in some way or other.

Q. At the time that the hedge was made in this class of cases, how could you tell where your customer would finally sell the stuff he had on hand; was there any way of doing that?

A. No sir.

Q. What?

A. No indeed; you could not tell anything about that.

Q. That would depend upon subsequent circumstances?

A. It would depend upon what he was working for, yes sir, he might want to hold for some time, I have known them to hold for years and not have the stuff delivered to them.

Q. Where do you live now? A. I live in Kansas City.

Q. How did you happen to come here?

Mr.

A. Why, Mr.—Christie.

Q. The Christie Commission Company? A. Yes sir.
Q. Of Kansas City? A. Yes sir.
Q. Got you to come here, said he would pay your way here didn't he?
A. No sir, he didn't say anything about it.
Q. What are you doing now?
A. I am in the manufacturing business.
Q. Is that conducted in your own name?
A. Why no sir, it is a Kansas City Brush Company. I am working for them, for the Kansas City Brush Company.
Q. Are you a stockholder?
A. It is not a stock company, it belongs to my brother, the brush company does.
Q. Who else has an interest in it besides your brother?

Mr. Jenks: Oh, I will object to that.

Mr. Robbins: That is all.

Re-Direct Examination

By Mr. Jenks:

Q. Mr. French, when the people hedge against hogs, or pork or grain of any kind that they have on hand, and they hedge on the Board of Trade of Chicago by selling the same commodity or the product of the same commodity, for future delivery, what has the sale on the Board of Trade to do with the
513 place where they actually sell the stuff, if they could deliver it, if anything?
A. Well, that is problematical. I don't know that it has anything to do.
Q. Where do they usually sell the actual commodity that they have on hand?
A. That depends upon where the man is doing business. If he is doing business in the northwest he is likely to sell—he is likely to bring the actual commodity to Chicago. If he is doing business where he is more accessible to St. Louis or Kansas City, or the southern market or New York, the eastern, far eastern, he is likely to ship it there.
Q. Well, then, how does he get out of the sale that he has made in Chicago on the Board of Trade?

Mr. Robbins: I object. He has already gone into that. I have asked him that on cross examination.

A. He buys it in there.
Mr. Jenks: In actually selling the stuff in some other market do they pay any attention to the sale they have made on the Chicago Board of Trade?

A. As a general thing they cover the transaction where they have hedged, in the market they have hedged, at the time they dispose of the cash article.

Q. And they cover it now, by counter purchase?

A. Yes sir, by selling.

Q. And they settle it by paying the difference as you have described? A. Yes sir.

Q. Now we will suppose that a man in the country had a large amount of corn in a crib or any other commodity which he held for a long time, for a year or more, and when he first got it he had made a hedge as well on the Board of Trade and that hedge, we will say, was for December or May delivery and he held his stuff beyond that time, what would he
514 do with the sale on the Board of Trade?

A. I don't believe you have got that right.

(Question read.)

A. He would have to close out that transaction.

Q. How?

A. By buying in the stuff against his sale and pocket his loss if he had a loss, and sell it for a future month still further ahead, if he wanted to keep his hedge.

Q. Then when the future time came along, what would he do then if he still had it?

A. He would still have to transfer it again, if he wanted to continue to hold and wanted to keep himself protected.

Q. And in these transfers, how would they be settled?

A. By paying the difference between the purchase and sale price, and pocketing the profits if a profit existed.

Q. Or paying the loss, if there was a loss? A. Yes sir.

Q. But he would not settle those things by either delivering the stuff on the Board of Trade or receiving it from the Board of Trade?

A. Not unless he shipped in his stuff, no sir.

Q. That is all. A. Not necessarily.

Grant W. Kenney, called as a witness on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

Q. State your full name. A. Grant W. Kenney.

Q. Where do you live? A. Kansas City.

Q How long have you lived in Kansas City?

A. Well, five or six years.

Q. Are you in business there? A. Yes, sir.

Q. What kind of business? A. Commission merchant.

Q. Dealing in what kind of commodities?

A. Grain and provision.

Q. How long have you been in that kind of business
515 in Kansas City?

A. Well, as an employe and for myself the last time, about four years, three years and half.

Q. Were you ever in that business anywhere else?

A. As an employe, I have been, that is all.

Q. As an employe is all. [Q] Where?

A. At various places, Omaha, Kansas City.

Q. How long altogether in Kansas City have you been in that business either for yourself or as an employe?

A. Well, I have worked there as an employe at various times for the last 14 or 15 years.

Q. During that time that you have been working there, has your business been a commission business?

A. Great deal of the time, yes sir, a majority of the time.

Q. And how about the business of the people for whom you have worked, was that a commission business?

A. Yes sir.

Q. Taking it in your own business and the business of those in Kansas City for whom you have worked, and where you or they acted as commission men, for whom did they act?

A. For various Chicago Board of Trade houses.

Q. Anybody else? A. Well—

Q. Any country customers? A. Yes.

Q. Now where, in doing the commission business were they in doing it for their country customers?

A. Well, the accounts that I carry are invariably carried Chicago.
between the customers and the Board of Trade house.

Q. What I am getting at, is the customer you do business for, customers out there to you?

A. Not directly, I do at times, but the general way of doing business is the customer direct with the Chicago Board of Trade house.

Q. Well, is that your business at the present time?

A. Yes sir.

Q. Do you represent a Chicago Board of Trade house now?

A. As correspondent.

516 Q. What house. A. Weir Commission Company.

Q. Have you done business for any other Chicago house? A. Not as correspondent, no sir.

Q. Now whenever you did business with a Chicago commission house, what kind of business was it that you did?

A. Both cash and commission; well it is a brokerage commission business.

Q. Who did you get your commission from?

A. Oh, I persume, indirectly, the customer.

Q. And whose customers are they?

A. The Chicago house, they belong to the Chicago house.

Q. Who sends the orders from the customers to the Chicago house.

A. I did, that is, my office acted in that capacity.

Q. Where would your office get the orders?

A. From the customer.

Q. From the customer, then they were your customers, were they not?

A. Well, considered so, in so far as I was interested in half the commission, the division of the commissions.

Q. How many customers did you have in the country?

A. Very few in the country.

Q. How many in Kansas City?

A. Well, that would be hard to determine that, I could not say.

Q. What number is your best judgment?

A. 400 would be an estimate.

Q. In the conducting of your business at Kansas City, have you had anything to do with Chicago houses that were members of the Board of Trade? A. Yes sir.

Q. What houses? A. Weare Commission Company.

Q. Any others? A. Not as principal, no sir.

Q. Have you sent trades to any other houses, either for yourself or any other person for whom you were working?

A. Yes sir.

517 Q. What other Chicago houses?

A. Well, I can't specify during the time I have been in that kind of business, and connected with numerous houses.

Q. Can you name some of them?

A. Yes, Kennett, Hopkins & Company, F. G. Logan, Weare Commission Company. I can't remember any other distinctly.

Q. And for how long a time have you had dealings with these different houses that you named? A. As an employe?

Q. Well, any way?

A. Off and on for the last 13 or 14 years.

Q. In the commencement of any deal that you had with any one of these houses, what was the first thing done?

A. The customer gave us orders to buy or sell; if it was an option trade, he would give us the order to buy or sell the option, or if it was a cash trade, I would act on behalf of the Weare Commission Company in buying whatever stuff they wanted in Kansas City.

Q. Now take the option business first, suppose it was an option, what would be the first thing done?

A. I would receive the order from the customer to buy or sell.

Q. Then what would you do?

A. Send the order to Chicago to the Weare Commission Company or—

Q. How? A. Usually by telegram.

Q. And what would the telegram contain?

A. An order to buy or sell at the price in case the price was specified or otherwise at the market.

Q. Some commodity?

A. Some commodity, wheat, corn, oats, pork.

Q. Or some option? A. Some future date, some option.

Q. Named as what? A. The month.

Q. And what are the options usually dealt in, in the speculative option, from Kansas City, in a year?

A. Well, they change.

518 Q. The usual months, what are they?

A. Well, that would be hard to determine, sometimes they are one month, sometimes another. Usually May and July, September, December and March.

Q. Now after you send that order for the customer to the Chicago house, what was the next thing done?

A. In case the order was executed, I would report the execution of it and at whatever price it was bought or sold.

Q. Then what would you do?

A. Report it to the customer.

Q. In the same way? A. The same way.

Q. Then what would be the next thing about that transaction? A. It would be entered on the books.

Q. And what is the next thing?

A. Well, it would remain in that condition until we had future orders from the customer.

Q. Suppose he gave you a future order, then what?

A. We would execute it in the same way.

Q. How? A. Sending it in to Chicago.

Q. Suppose it was a purchase in the first place, what would the next order be about the same transaction?

A. Well, if he wanted to make a purchase of more grain, he would give me a similar order to the previous one.

Q. But if he wanted to dispose of the grain that he had bought, then what?

A. He would give me an order to close it out.

Q. Then what would you do?

A. Report it to Chicago. When I had received the reply, report to him the price at which it was sold.

Q. Then what?

A. The following day I would—the customer would get an account of purchase and sale showing his profit and loss in the trade.

Q. Then the report that you would get from the Board of Trade house would be first, that they had made the sale and

stating the price; the next morning you would get the account of purchase and sale, you would get that by mail, would you?

A. Yes sir.

Q. And that account of purchase and sale would contain what?

519 A. Statement of the transaction showing the profit or the loss.

Q. What two transactions? A. All the transactions.

Q. And carried out showing what?

A. Showing the profit or loss, whatever it may be.

Q. And the profits or loss would be made up of what?

A. What he had bought the stuff at, and what he had sold it at, the difference in the price.

Q. Would any commissions be deducted out of it?

A. It would always be minus 1-8 commission in case he was not a member of the Board of Trade, or in case he was, we charged him a sixteenth.

Q. Then when it came to you in that shape, what would you do in reference to your customer?

A. Enter the transaction on the books and await further instructions from him.

Q. And if there was a loss in the transaction, what would appear on your book about the loss?

A. The loss was so much money and so much on such a transaction.

Q. Then, in closing a transaction with your customer, what would be the last thing done?

A. Collecting or paying him the difference in price or whatever his ledger credit may be.

Q. And whatever difference in price would be the difference in the market price of the commodity bought and that sold?

A. It would be the difference in the trade that he had made.

Q. Yes, and the purchase would have been at the market price and the sale at the market price, would it not?

A. It would necessarily have to be.

Q. In Chicago? A. Yes sir.

Q. Was that the rule as to transactions which you had for customers between yourself and the Board of Trade where they were dealing in futures? A. Yes sir.

Q. Now since you have been dealing in futures for Chicago

520 customers or for yourself on the Board of Trade through a Board of Trade house, how extensive has been your whole dealing there, say in grain?

A. Well, that would be rather difficult to say; it varies at times, and I could not give only a very crude estimate in regards to the amount during the entire time.

Q. Well, give us your best judgment as to the amount per year, if you can, or per month, or per day.

A. For the last—well, since the first of July, on which date I started as correspondent for the Weir Commission Company—

Mr. Robbins: Wait a minute, that is since the filing of the bill.

The Master: Yes, I think you have confined all the other testimony to the time prior to the 15th of June.

Mr. Jenks: The Court in Cincinnati went down since that time on the Board of Trade side. How is that Mr. Robbins?

Mr. Robbins: That is true, but you objected here to our going down.

Mr. Jenks: Well, I am going beyond too.

Mr. Robbins: You have got the Master to rule.

Mr. Jenks: I think it is competent under the ruling of the Judge down there.

Mr. Robbins: You didn't think much of the ruling of the Judge down there when I tried to get that in, did you?

Mr. Jenks: No, I did not, I did not, I thought the Judge was wrong, but I, think this, that perhaps the Judge may perhaps be justified in that, because the Judge down there thought it was necessary to inquire about later transactions and down to the present time to find out what ought to be done with this case. I think the question here is bucket shop on both sides. Those are the questions.

Mr. Robbins: I think you had better overrule it and let him answer.

521 Mr. Jenks: Now I am going to show that the same business that is conducted now was conducted heretofore, and that the same business that was conducted heretofore is conducted now on the Board of Trade.

The Master: Objection overruled; he may answer.

(Thereupon the last answer was read.)

A. (Continuing)—my business has been possibly on an average of four millions per month.

Mr. Jenks: And previous to that time, how was it?

A. Well, I could not give a very fair estimate of that, possibly a million and a half to two millions.

Q. Per month covering what time, the whole 15 years?

A. No sir, nearly,—about three years that I was then managing the affairs of the Weare Commission Company in Kansas City.

Q. Now are you speaking of this million and a half or two million did you say, per month, or four millions per month, was that what you call option trading? A. You mean speculative?

Q. Yes.

A. I could not tell you, it might be and it might not. It may be a speculation, and a man might have given me a trade to hedge cash purchases of wheat and given me a trade and I made some trade here that it was a speculative trade or hedge—

Q. Well, we will call a speculative trade speculative too, then, it is an option if you put in the hedging of option trading isn't it? A. Yes, it is option trading in cases—

Q. The hedging comes under that.

Mr. Robbins: Let him answer.

A. In case the trade would be closed up it would be an option trade.

Mr. Jenks: Now in doing that whole business that you have done, is the manner of doing it substantially as you stated in the one case that the two things were?

A. Speculative trades?

Q. Yes.

A. The greater number of them has been the buying
522 and closing out or the selling and closing out of those option trades.

Q. With or without delivery? A. Without delivery.

Q. Wherever that has been made and closed out without delivery has payment ever been made upon the commodity either way? A. Repeat that question.

(Question read).

A. Not to my knowledge, no sir.

Q. Well, you know it is not, don't you? Where the trade is closed out without a delivery is the commodity paid for?

A. No sir, not through me.

Q. Well, how it the trade settled, the final settlement of it?

A. Settling the difference between the purchase price and the sale price.

Q. That is the way it is always settled? A. Usually.

Q. And they take out of that what?

A. The commission.

Q. Suppose there is a profit made in the deal, they take out of it what? A. The commission and the revenue tax.

Q. Now in the business that you have been conducting, is there any such thing as putting up margins?

A. Yes sir, what we call putting up margins.

Q. Who puts up the margins?

A. The individual that makes the transaction.

Q. That is the outside customer? A. Yes sir.

Q. What margins are required, as a rule?

A. Well, it varies in accordance to the man's financial stability, usually.

Q. Well, suppose you don't know anything about it, what is the margin required?

A. We would make him put up from two to three cents per bushel on wheat, sometimes more, sometimes less, according to the state of the market.

Q. In that business is there any such thing known as stop orders? A. Yes sir.

Q. What do they mean?

Q. Well, in case a man had ten wheat bought at 75 cents and wanted to stop his loss on that ten wheat at 74
523 cents, he would therefore give me an order to sell ten wheat when the market reached 74, that we call a stop loss order.

Q. And after you get such an order what did you do with reference to the Chicago house? A. Send that along to them.

Q. Then after they get that order what do they do with it?

A. Give it to their broker in the pit.

Q. And suppose the loss gets down to 74 what does he do?

A. Sells it out whenever he—in his judgment the market—

Mr. Robbins: Wait a minute, I object to his testifying about what somebody else does, what does he do? The best way to get at what he does is to get the man that does it, and not the man way out in Kansas City.

The Master: I think if he knows he can testify to what he does, although he is in Kansas City he may testify.

Mr. Robbins: But the transaction is here and not in Kansas City.

Mr. Jenks: I will get a report of the transaction pretty soon, that

A. Just suppose he sells it—

Mr. Robbins: I object to what he supposes.

The Master: I think the objection is good at the present time. I think you had better qualify this witness.

Mr. Jenks: Suppose you send a stop order to the Chicago house and the market declines to the stop point or beyond, what report do you get from Chicago?

A. That the order has been executed by sale usually at the stop order price where it was possible to do so.

Q. And if it was not possible to stop it at that price, what report would you get?

A. Report of its execution at we presume the best price the broker could sell it at.

Q. That is the report you get isn't it? A. Yes sir.

524 Q. And fixing the price? A. And fixing the price.

Q. That it was sold at? A. Yes sir.

Q. Then how was that transaction closed up?

A. The same as the previous one as illustrated to you.

Q. By somebody paying the loss there?

A. Somebody paying the loss or at times even a man bearing his loss, he may still have a profit.

Q. But the transaction is settled up every time by the payment either one way or the other of the difference in the market price, isn't it? A. Yes sir.

Q. Now in all of your speculative transactions covering the time you have been in business, how much of the stuff purchased for future delivery has ever been delivered to you or by you to your customers?

A. Well, I could not exactly state.

Q. Make an estimate of it as nearly as you can.

A. A very small per cent possibly a tenth of one per cent, possibly one per cent.

Q. During the 15 years that you have been in business there and doing business through Chicago houses, members of the Board of Trade how frequently would there be transactions between you? A. Several times a day.

Q. And how frequently would there be any deliveries between you? A. Well, I could not state, very seldom.

Q. By seldom, how much time would intervene between the deliveries, state the longest time and the shortest?

A. Well from one month to a year.

Q. Have you done business there for a year without any deliveries at all? A. Yes sir.

Q. Do you know anything about the purchase and sale of cash commodities? A. Yes sir.

Q. Do you know the difference between the purchase and sale of cash commodities and the purchase and sale of commodities for future delivery or on speculation? A. Yes sir.

Q. Do you know where cash commodities in your
525 business at Kansas City are usually sold? A. Yes sir.

Q. Where? A. On the floor of the exchange.

Q. What exchange? A. Kansas City Board of Trade.

Q. The Kansas City Board of Trade? A. Yes sir.

A. That has nothing to do with the Chicago Board of Trade? A. No sir.

Q. Do you know anything about hedging deals on the Chicago Board of Trade as connected with your customers or with you? A. Yes sir.

Q. What is a hedging deal on the Chicago Board of Trade as between your customer or yourself?

A. Well, if I buy ten thousand bushels of cash wheat, I sell a like amount and hedge myself to protect myself from loss.

Q. And what do you do with the cash wheat?

A. When I sell it, I buy in my hedge.

Q. Well, the cash wheat that you have, do you ever deliver that on the Chicago Board of Trade or to the Chicago house? A. Yes sir, frequently.

Q. How? A. Ship it up here.

Q. That is where you have bought it for Weare & Company, isn't it? A. Yes sir.

Q. Well, I was talking about this—Weare & Company do a cash business, don't they? A. Yes sir.

Q Well, as doing a cash business in future? A Yes sir.

Q. Now, when you ship the stuff to Weare & Company, and that commodity is hedged by a transaction on the Board of Trade, where is that commodity actually delivered or shipped or sold?

A. Well, to various points or places, the bulk of the stuff that I bought there for them has come to Chicago.

Q. And it is shipped to other places too?

A. It is by other people although I have never done any of that myself.

Q. I am talking about the stuff that you have bought
526 for them and you have the actual stuff in Kansas City or in elevators anywhere? A. Yes sir.

Q. Is that stuff some times shipped somewhere else?

A. Never has been, no sir, only to Chicago.

Q. Now, when it is shipped to Chicago and sold, where does it go to? A. I couldn't tell you.

Q. Do you know where those sales are made of actual stuff? Whether on the Board of Trade or in the office of Weare & Company, or by Weare to be shipped somewhere else?

A. Well, it is naturally presumed that they are made on the floor of the Board of Trade during market hours.

Q. But you don't know that?

A. I could not state positively no sir.

Q. Then where they have hedged the deal or anybody else has hedged the deal, when they sell the actual stuff, what do they do with that after they have sold on the Chicago Board of Trade?

A. Well, it is presumed that when they sell that cash wheat they buy another outfit or hedge.

Q. Then how do they settle the option after they have bought it in?

A. Settle the difference in the account of purchase and sale and debit or credit the difference.

Q. In your transactions with the Board of Trade houses since you have been in the business, wherever a purchase has been made for future delivery, or contract of purchase, either

for yourself or for your customers, what is the understanding as to how you can close that out?

A. By sending in an order and having it executed on the Chicago Board of Trade.

Q. To sell it out and settle it how?

A. The same as I have illustrated to you.

Q. By paying the difference?

A. By paying the difference.

Q. Whenever a purchase is made on the Chicago Board of Trade for future delivery, the usual custom of the people
527 in the country, state whether it is the understanding that they have got to receive and pay for that stuff or whether they can sell it out and merely receive or pay the difference in the market price?

Mr. Robbins: I object, that that is calling for the witness' opinion of what other people understand.

Which objection was sustained by the Master.

Mr. Jenks: How is [—] as to your own business, where you have an order to purchase through a Chicago house on the Board of Trade, what is the understanding as to whether you can close that out in any other way than by taking and paying for the commodity?

Mr. Robbins: Wait a minute, that is too general. I think he ought to confine himself to individuals so we can disprove it.

Mr. Jenks: He is an individual, isn't he?

Mr. Robbins: But he says in his own business with customers, how would they do?

The Master: You don't understand the question.

Mr. Robbins: His customers.

The Master: His personal dealings with the Chicago Board of Trade firm.

Mr. Jenks: Answer the last question.

(Question read.) (Question withdrawn.)

Q. In deals for yourself, where you order a purchase through a Chicago house, a member of the Chicago Board of Trade, do you have any understanding as to whether you can close that deal in any way except by receiving the commodity and paying for it?

Mr. Robbins: He has not testified that he had any deals himself with a Chicago house. He stated that he is an agent of the Chicago house, simply, and he sends the orders to the Chicago house simply for execution.

Mr. Jenks: Did you have any deals of your own with the Chicago house? A. I have had, yes sir.

528 Q. Now, in those deals, when you would order a purchase made, did you have any understanding as to whether you could close that deal out in any [—] except by carrying the stuff until delivery day and then receiving it and paying for it?

A. Never had any understanding, it is natural, I presume, that I could if I wanted to.

Q. Could what? A. Sell it out or buy it in.

Q. And settle it how?

A. As you see, as I have illustrated to you, by paying the difference or getting the profit.

ever

Q. And did you have any business of your own where a Board of Trade house bought anything for you for future delivery? A. Bought anything for me?

Q. For you for future delivery?

A. For my customers, yes sir.

Q. Covering what period of time?

A. Well, I don't understand what you mean.

Mr. Jenks: I will waive that.

Q. Have you had dealings on your own account with members of the Chicago Board of Trade, by which, through your orders, they bought anything for you? A. Yes sir.

Q. In those transactions was anything ever delivered to you on account of those purchases? A. No sir, not for myself.

Q. How were those trades settled?

A. Closed them out at the market prices.

Q. And paid what?

A. They received the difference in the way of profit or paid the difference in the way of loss.

Q. Were you ever a member of the Chicago Board of Trade?

A. I am now.

Q. And you testified to that, I think. How long have you been? A. About four or five months.

Q. Were you ever a member of the Chicago Board of Trade before that? A. No sir.

Q. Are you a member now merely because the rules of the that Board require that in order you may do business with members of the Board?

529 Mr. Robbins: Objected to.

The Master: Sustained.

Mr. Jenks: That is all.

Cross-Examination

By Mr. Robbins:

Q. How long have you been connected with Weare & Company?

A. I am not connected with them now. I was connected with them for nearly three years, up until the first of July, and I am now their correspondent at Kansas City.

Q. Prior to July, 1897, with whom were you connected?

Mr. Jenks: 1897?

Mr. Robbins: Yes, he says three years ago.

A. I was in California for a year.

Q. Who were you connected with before you were connected with the Weare Commission Company?

A. The Christie Commission Company.

Q. The Christie Street Commission Company, wasn't it?

A. Christie Street.

Q. Is that concern in Kansas City?

A. Yes sir, it was at that time.

Q. Is that what is known as a bucket shop?

A. I think it is, yes sir.

Q. How long were you connected with them?

A. About a year ago.

Q. Now during that time, you did not send your trades to the Board of Trade, did you?

A. No sir, I simply assumed a clerical position there.

Q. Well, the Christie Street Company did not, so far as you know, send its trades to the Chicago Board of Trade, did it?

A. No sir.

Q. It took the trades themselves on both sides, did it not?

A. Yes sir.

Q. In the way that bucket shops do? A. Yes sir.

Q. Did you have any connection with the Christie Commission Company except that one year? A. No, sir.

530 Q. Been connected with any other bucket shops before that time? A. No sir.

Q. Weren't you an officer of the Christie Street Commission Company?

sir,

A. I Held stock in the concern, yes, a little.

Q. And an officer, were you not?

A. Well, it was a figurehead office, yes sir.

Q. What do you mean by the word "Options" you used?

A. Options?

Q. Yes, see if you can define it—

Mr. Jenks: Wait a minute, let him answer.

Mr. Robbins: Not much, I will put the question to him.

Mr. Jenks: Let him answer.
Mr. Robbins: No I won't, I will withdraw the question.
Mr. Jenks: Then withdraw the question.

Mr. Robbins: Your meaning of options, see if I understand it, is a contract for future delivery in which the seller has the right to select some day in the month that is mentioned in the contract for the delivery of the property and the purchaser is obliged to take the property at any day in the month that the seller selects? A. Yes sir.

Q. The only option that there is in that class of contracts is the option which the seller has to select a day in the month on which to deliver? A. Yes sir.

Q. And that is what you mean by the word option, is it?
A. Yes sir.

Q. Future contracts, wherein the seller has the right to select a day in the month mentioned? A. Yes sir.

Q. For delivery? A. Yes sir.

Q. This business that you have testified to of your connection and personal connection with it, is in sending the trades to the Weare Commission Company to be executed?
A. Yes sir.

Q. You don't have anything to do with the execution of the trades in Chicago? A. No sir.

Q. You understand that the Weare Commission Com-
531 pany when they get these orders, go upon the floor of the Exchange and openly bid for the commodity mentioned in the order? A. Yes sir.

Q. You make a contract of that kind with another member of the Board of Trade? A. Yes sir.

Q. You don't understand that there is anything stated in those transactions with respect to whether there is going to be any actual delivery of stuff or not, do you, when the bidding is made?

A. It is generally understood that the stuff is to be delivered or that is the way we accept the order, with that understanding.

Q. The trades are taken subject to the rules of the Chicago Board of Trade, are they? A. Yes sir.

Q. And the understanding with your customers is that the transaction shall be forwarded to Chicago and so executed by your correspondent here, upon the Board of Trade, and in compliance with its rules and regulations? A. Yes sir.

Q. That applies to all your business? A. Yes sir.

Commission

Q. You don't notify the Weare Company in any of your trades that your party don't intend to deliver or don't intend to receive, do you? A. No sir.

Q. Don't say anything about that? A. No sir.

Q. And that applies to all your business relations with Chicago? A. Yes sir.

Q. When you have made a purchase and then order a counter sale or a sale, and order a counter purchase, to close the transaction, you understand that the second order is filled on the Chicago Board of Trade in the same way that you have just stated as to the original order? A. Yes sir.

Q. It results, don't it, in two contracts, made by the Weare Commission Company, on the Chicago Board of Trade, one to buy and the other to sell? A. Yes sir.

Q. And made with two different members of the Chicago Board of Trade? A. Yes sir.

Q. When you close that transaction, as between
332 yourself and your customer, it does not necessarily follow, does it, that the trade is closed as between the Weare Commission Company and the other members of the Board of Trade, does it? A. Not at all, no sir.

Q. You may close to your customers, and yet the trades remain open on the Chicago Board of Trade until the delivery time comes? A. Yes sir.

Q. And there might be an actual delivery on those contracts by the Weare Commission Company before the day named with the other members of the Board of Trade?

A. Yes sir, I presume that is so.

Q. Don't you know that that is frequently so?

A. Well, I know that is would be a violation of the rules were it not so.

Q. This hedging, what class of persons hedge through you?

A. People who deal in the actual commodities.

Q. Well, lets see, millers?

A. Millers, elevator people, people who buy and sell the actual grain in carloads or large lots.

Q. Owners of corn in cribs? A. Yes sir.

Q. Throughout the country? A. Yes sir.

Q. Packers of hog products in Kansas City? A. Yes sir.

Q. It is quite customary, is it not, that the packers of Kansas City, when they buy the hogs for packing purposes, will sell against them on the Chicago Board of Trade to protect themselves against depreciation in loss.

A. I presume it is, but I never had any of that class of business.

Q. Never had any packer hedges?

A. No sir, not to amount to anything.

Q. At the time that these people made their so-called hedges they have the actual property that they sell, do they not? A. Yes sir.

Q. In some form or another? A. Yes sir.

533 Q. Either in corn or in stock, in cribs or somewhere or other? A. Yes sir.

Q. That is corn of the character bought and the character that is sold on the Chicago Board of Trade? A. Yes sir.

Q. Which is susceptible of delivery on the Chicago Board of Trade, on the so-called hedging contract, is it not?

so

A. Yes sir, in case they choose to do, and the quality of of wheat will permit it.

Q. Is there no way of telling at the time that they make these sales where they will actually deliver that property is there? A. No.

Q. They may deliver that identical property in the sales they made by way of hedge?

A. They may, in case the grade will permit them, yes.

Q. That depends of course, upon where the most favorable market is at the time they desire to part with their property, does it not? A. Yes.

Q. You would not undertake to say in the business that you have sent to the Weare Commission Company what percentage of the volume of its business has resulted in actual delivery as between the Weare Commission Company and the other members of the Board of Trade with whom they had made the contract?

A. No indirectly, I could not tell, there is no way of my knowing that.

Q. If the Weir Commission Company on one of your sales received the property and then delivered it out on account of purchase from you they would make the deliveries themselves without your knowing anything about it, wouldn't they?

A. Well, that could be.

Q. In case you had given an order to sell and to buy and had closed with your customer?

A. That would be a transaction of course between the Weare Commission Company and whoever the trade was rung up with, you know, on the Board.

Q. You would not have any report or knowledge—

A. No sir.

534 Q. Of that delivery?

A. No, I would not have any report of it.

Q. And you are not in a position to tell what percentage of deliveries— A. No.

Q. They made between the Weare Commission Company and the other members of the Board on the transactions that you sent the Weir Commission Company?

A. No, I can only speak on my own behalf or for my customers.

Q. As between yourself and your customers? A. Yes sir.
Q. How did you happen to come here, Mr. Kenney?
A. I came here on business.
Q. Did you have any talk with Christie before you came here? A. No sir.
Q. Did you have any talk with anybody in Kansas City about testifying here before you came here? A. No sir.

Mr. Jenks: He is subpoenaed, that is the way he came here.

Mr. Robbins: That is all.

Mr. Jenks: Now, I don't believe I have another witness here to-night. To-morrow morning I have got to be in the Probate Court, how long I will be there, I don't know.
Mr. Robbins: Excuse me, Mr. Jenks. Mr. Hill says some of your witnesses are waiting out there for you.
Mr. Jenks: I think I will not put them on to-night, and I think we might as well adjourn until two o'clock to-morrow.
Mr. Robbins: How long will you be in the Probate Court?
Mr. Jenks: I don't know.
Mr. Robbins: Suppose we adjourn to eleven, and then we will adjourn further if you are not through there.
Mr. Jenks: I know that I won't be through at 11. I have two matters in the Probate Court one of them I think will be short, and one of them will be long, and I will say, adjourn to two o'clock to-morrow. Now it is possible that I will
535 not be through and if I am not through I will try and let you know before two so that you won't have to come here. Will that satisfy the Master?
The Master: On the request of the defendant—
Mr. Robbins: Before you make the ruling, let me object to any postponement beyond to-morrow morning.
The Master: You can have that on the record, I understand.
Mr. Robbins: And this particular motion—I ask the counsel to proceed in the morning to complete this evidence and object to its being postponed.
Mr. Jenks: Now, I don't care what the gentleman asks.
Mr. Robbins: Merely to make my record.
Mr. Jenks: I merely state my position about it, I can't be here in the morning at ten o'clock.
The Master: Well, gentlemen, that is the ruling of the Master, that on request of the defendant's counsel the further hearing is adjourned until two o'clock to-morrow.

And thereupon, at 4:15 o'clock P. M. [ad] adjournment was taken to two o'clock P. M. Wednesday, November 27th, 1901.

2:00 P. M. November 27th, 1901, pursuant to the adjournment on yesterday, the following proceedings were had before the Master:

The Master: Let the record show two o'clock P. M. Wednesday, present Mr. Robbins and Mr. Jenks represents by telephone that he is in the trial of a case in the Probate Court of Cook County, and asks that an adjournment be had in the taking of testimony of defendant to Friday, November 28, at 10 o'clock A. M. to which motion the complainant objects.

Mr. Robbins: On the ground that there is another counsel in the case, Mr. Shay, and that the examination should be proceeded with by the defendant.

The Master: No counsel at all appearing for the de-
536 fendant and no witnesses being offered, the Master adjourns the hearing to Friday, November 29th, at 10 o'clock A. M. on the motion of the defendant.

Mr. Robbins: Mr. Master, I want this, and I want the record to show the beginning time, the time we begin our session and the time it closes.

The Master: I understand that has always been done, that should be done.

Mr. Robbins: There has been two stenographers, and so I say we adjourned at 4:15 yesterday, and I would to have when this is written up that shown.

The Master: That may be shown.

Mr. Robbins: So that we may have access to the question as to establishing our diligence that we can show just how many hours we have been spending taking this evidence.

And thereupon, at 2:20 o'clock P. M., an adjournment was taken to 10 o'clock A. M., Friday, November 29th, 1901.

November 29th, 1901, ten o'clock A. M., parties met pursuant to adjournment.

Robert H. Nye, a witness called on behalf of the defendant, being first duly sworn, and examined in chief by Mr. Jenks, testified as follows:

Q. Will you state your full name? A. Robert H. Nye.

Q. Where do you live?

A. You mean street address? City of Chicago, 145 Spaulding Avenue.

Q. What is your business?

A. My business has been grain business for a number of years. At present I am not connected with any firm.

Q. Were you ever in business connected with the Board of Trade of the City of Chicago? A. Yes sir, I have been.

Q. Were you a member of the Board of Trade?

A. I was.

Q. Covering what period of time were you a member of the Board?

537 A. Well, let's see, perhaps from '94 to '99 somewhere along in that neighborhood.

Q. 1899? A. Yes sir.

Q. With what houses, members of the Board of Trade, have you been connected?

A. I have been with the Charles Counselman & Company, Counselman & Day, and prior to that I was with Reynolds Brothers.

Q. For what time have you been connected with houses dealing on the Board of Trade, either for yourself or for others?

A. Oh, I have been in business for about twenty years.

Q. When was the last that you were connected with business upon the Board of Trade? A. About two years ago.

Q. Covering the whole period of time that you were there, state whether the business on the Board and connected therewith with reference to grain deals was conducted in about the same way each year?

A. Well, as far as trade is concerned, I suppose it is conducted about the same year in and year out.

Q. Have you been connected with any house that did a commission business on the Board of Trade?

A. Yes sir, I have.

Q. Suppose I take the house of Counselman and Day, what sort of business did they do on the Board of Trade?

A. They did a commission business, grain and provisions.

Q. For whom were they commission men, as a rule?

A. Well, for the customers.

Q. And the customers, as a rule, were located where?

A. Well, some in New York and some in Minneapolis and different places.

Q. In and out of the city of Chicago?

A. In and out, yes.

Q. Those that were away from the city of Chicago, do you know how they sent their orders to Counselman & Day?

A. Generally by wire.

Q. And if any transaction or order was sent by wire
538 and the transaction was to be an initial one, what was contained in that wire or message?

A. For example, it might be, "Buy ten thousand bushels of May wheat, market" or if it was limited, it might be "Buy ten thousand bushels of May wheat, seventy-six."

Q. After receiving that order, what was done with it?

A. It was given up to one of the representatives and it was executed.

Q. What was your part of the business while connected with Counselman & Day?

A. Well, part of the time I was in the office and part of the time I was taking the orders on change and delivering them—sending them by the boys to different traders.

Q. While you were in the office, what part of the business did you attend to?

A. Well, I kept their customers options and margins part of the time, and made out their purchases and sales.

Q. After Counselman & Day would receive the message which you have mentioned, what was the next thing done about it?

[Q.] Well, after the message was received, it was sent to the brokers and traders in different pits, and when the order was executed the customer was wired accordingly.

Q. Well, after that, what was put on the book by Counselman & Day?

A. A record of the trade as it was made on the floor of the Board.

Q. Were those orders on that trade, we will say the order was to purchase, and we will say that the order was to purchase something for future delivery, say December delivery, what would be put on the book, or on what book would it be placed after the order had been filled?

A. Well, on the customers' ledger it would be entered by showing the date of the purchase, and the amount bought, and the month that it was to be delivered in and the price.

Q. Did it ever occur in their business that they would have more than one order to execute at the same time?

A. Yes sir.

Q. How extensive would they hold orders to buy or sell?

A. Well, I couldn't say as to that.

539 Q. Can you make any estimate of it, of the number?

A. Why it varied. Some days the trade might amount to a million, and the next day it might be two million, and the next day it might be three million. It varied at different times.

Q. What do you mean by two or three millions?

A. Bushels.

Q. Of what? A. Of grain.

Q. To be dealt in? A. Yes.

Q. Did it ever occur that when they had such orders a man went on the floor and filled orders to purchase with one man on the floor?

(Question read).

A. Well, the orders were filled on the floor.

Q. Who were the dealers on the floor of the exchange room of the Board of Trade? A. The members of the Board.

Q. Any one else?

A. None but members are allowed to do trading there.

Q. Suppose they had from different customers orders to purchase 100,000 bushels of wheat for future delivery, and one order was for a ten thousand bushel lot, and they went on the floor and executed all of those orders by purchase from one man some other member of the Board of Trade, did it ever occur that they would make a purchase to fill all of those orders in one transaction on the floor?

Mr. Robbins: I object to that because it doesn't appear that this witness filled those orders. He never was in the pit according to his own testimony.

The Master: He can testify it he knows.

Mr Jenks: Did you ever fill those orders yourself on the floor? A. I have filled some, but I didn't fill very many.

Q. You were a member of the Board? A. I was.

Q. At the time you filled the orders? A. Yes sir.

Q. You know how they do business there on the floor, don't you? A. I do.

540 Q. And how they did at the time you were there. Did it ever occur that the man filling orders for Counselman & Day, say for the purchase of wheat, where he had several orders to be filled of the same kind, that he would fill all of those orders with one transaction with a member of the Board on the floor?

Mr. Robbins: That should be confined to the filling of orders in which he was interested.

Mr. Jenks: To what he knows.

The Master: Unless he knows of his own knowledge.

Mr. Jenks: Do you know?

A. I couldn't state to any amount, but several purchases might be filled or several orders might be filled with one purchase covering the total amount, in other words, being bought from some other member of the Board.

Q. Did they ever buy from one party on the floor as much as 100,000 bushels of wheat, in one transaction?

A. Well, I think they have, but I couldn't recollect any one particular case, just exactly.

Q. Well, generally is what I want to get at. If not one hundred thousand, fix the amount that you know they did buy in one transaction?

A. Well, I can't say the amount that was bought from one party.

Q. What is the largest amount that you know of, that you remember? A. Well, I can't tell.

Q. Well, suppose they bought from one member in one transaction a one hundred thousand bushel lot at a time, of

that transaction on the floor. What was the mode of dealing as to what each party would do there on the floor?

A. Well, one man would sell to Counselman & Day and the amount he would buy or sell would be put down sold so much to Counselman & Day at such a price, and on the bought side of their trading cards, Counselman & Day would make the purchase of it.

Q. Would each one of them record the option?

A. They would.

Q. State whether it was for one month or another, would they? A. They would, yes.

541 Q. Then after they make that trade, what do they do when they get back to the office?

A. Well, the trades are entered on the customers in the accounts of the customers that they are made for.

Q. What book is that called?

A. It is called the customers ledger.

Q. What else?

A. And the trading cards are entered in another book. I don't know what all firms would call that. We might call it a journal, showing a record of the transactions with the members of the Board.

Q. And what would be put down in that book?

A. A memorandum of the transaction as it was made on the floor of the Board.

Q. In what shape would it be put down? We will say the purchase was one hundred thousand bushels of wheat from one party?

A. The left hand page of the journal was the bought side and the right hand side was the sold side. If it was bought, it would be entered up in lots of five thousand bushels each on the bought side.

Q. Explain a little more fully exactly what you mean by that? At the top of the page would be what?

A. At the top of the page might be the day of the month and the year.

Q. Any name?

A. No, there would be no name at the top of the page, not in the journal.

Q. When you say it would be put down in five thousand bushel lots, state exactly how it would be put down on the book?

A. Well, the book is ruled so that what is claimed—first, ruled for the date, and the next column I think, is for the name of the party the transaction is made with, and then the quantity bought. Five thousand bushels would be entered in there at such a price.

Q. And then below that?

A. Then there would be another five thousand entered in the same way if the transaction was for a hundred thousand bushels.

Q. Keep on?

A. And keep on until you had entered up twenty—
542 whatever the items were at five thousand bushels each.

Q. And under the name there would be the ditto mark? A. Yes sir.

Q. And under everything, the price being the same, would be ditto, and under the five thousand bushels would be ditto?

A. No, it would not, there wouldn't be a ditto under the five thousand bushels. The price would be ditto, generally put in the amount.

Q. Five thousand bushels? A. Yes sir.

Q. And if the purchase was of one hundred thousand bushels there they would have twenty items right there on that one page to make up one hundred thousand bushels? A. Yes sir.

Q. When the purchase would all be one day and one transaction? A. Yes sir.

Q. That is as to their customers. Suppose they had ten customers, each one buying ten thousand bushels, what would they put on the customers ledger as to that one transaction?

A. They would have ten thousand bushels in the account of each one of those customers, showing the date it was bought, and the quantity; if it was ten thousand enter in there ten thousand May wheat, there for instance.

Q. And if they put down the name of the party with whom they had the transaction, they would name the same party that was on the other book that contained the twenty entries, would they?

A. Not on the customers accounts. They don't put the name of the party the trade was made with here. They keep all that on the journal, but it is not entered in the customers individual account.

Q. Then suppose one of the customers would order sale of his lot of ten thousand bushels, what would be put on the customers ledger after that order had been executed?

A. Entry would be made showing the date of the sale and the quantity and the option and the price.

Q. Would anything appear on the account of the other member of the Board of Trade where you had those
543 twenty items of five thousand bushel lots?

A. You mean in reference to this sale; not unless it was bought from the same party that it was sold to. Then they would enter it up as a direct settlement.

Q. A direct settlement between the two members of the Board of Trade?

A. Only one member of the Board if it was a direct settlement, bought and sold.

Q. Counselman & Day would be the other party?

A. Yes sir.

Q. So that it would be a direct settlement between the two members of the Board of Trade? A. Yes sir.

Q. Then in that case you would have two members of the Board of Trade settling that transaction as to that five thousand bushel lot?

A. Well, they would make a difference between the selling price—

Q. And the purchase price? A. Yes sir.

Q. With their customers, was there such a thing required as deposits for margins? A. Yes sir.

Q. How much were customers required to deposit for margins? A. That varied according to the condition of the market.

Q. In those orders that would come for purchases, were there ever any such things as stop orders? A. There were.

Q. What does a stop order mean?

A. It means to stop the loss on a transaction at such a price.

Q. How can that be done?

A. Well, if the wheat is bought in the first place, you sell it out on the stop loss order, whatever they want to stop the loss at. If it was sold on the floor—

Q. Then is the customers, suppose the customer made a purchase of wheat for future delivery, with a stop order, and afterward that wheat was closed out, how would they close it out?

A. They would close it out by settling the loss at that price and the difference would be made from that.

Q. And what would be done as to the loss?

544 A. Why the account of purchase and sale would be entered in the journal and posted in the ledger, to the customer's account, and then a check would be handed in for the difference, if anything.

Q. That is to say, if it was a purchase originally, and it was sold out on a stop order, there would of necessity be a loss in that transaction, and if a check was given to the customer, it would be made up of what, taking into consideration the margins that had been put up?

A. If the amount of purchase or sale showed a loss, and the loss was not great enough to off set the amount of margin, the customer would be paid a check for the difference between the margins and the loss as shown in the account of purchase and sale.

Q. And the loss would be made up of what?

A. Of the difference between the price it was bought at and sold at.

Q. Would the customer be charged a commission?
A. Yes sir, he would be charged a commission.
Q. Anything else?
A. At the present time there is a government tax.
Q. Then what would the customer be charged in the account? A. I don't understand just what you mean.
Q. He would be charged the loss, the difference between the purchase and sale price, the commission and the government tax? A. Yes sir.
Q. That would be taken out of this check for what would be sent to the customer?
A. A check for that difference between the amount of his margins and the loss in his account of purchase and sale.
Q. Now we will suppose that the margins were not enough to pay the loss, then what would be the transaction in closing out the whole matter, of that deal?
A. Well, they would get a check from the customer for the difference; that is, if they could; if not, they must stand
545 the loss themselves.
Q. Now will you state if you can what clerks are employed by a Board of Trade house in transacting their business on the floor of the Board?
A. Those that transact their business on the floor of the Board are all members of the Board, at least all brokers and traders.
Q. Well, what other clerks does a Board of Trade house employ in making a purchase and sale and in closing up the transaction from beginning to end, winding up the whole thing? Tell us what clerks do that kind of business?
A. Well, after the order was filled by the broker on the floor it goes through the hands of the bookkeeper and then the second clerk, if it is in the city, and the cashier I suppose would have to handle the check.
Q. Then about the clearing house, is there a clerk there?
A. We will settle the difference in that way, through the clearing house, and then receive a check for the difference.
Q. What does the settling clerk do?
A. Well, he settles the trade and enters it up in his ring book, enters up the trade, the quantity bought, and the option and the price, and the settling price each day, and the difference as figured between the settling price and the bought and sold price, and that difference is what goes through the clearing house.
Q. Who makes the settling price?
A. I don't know whether it is made by the secretary or who does make that.
Q. It is made on the Board of Trade, is it?

Mr. Robbins: I object to that as it is a matter of rules.
The Master: The witness doesn't know, so that he does not know anything about it.
Mr. Robbins: I move to strike out what is said about settling price, on the ground that it is covered by the rules.
546 The Master: I think it may stand.
Mr. Jenks: The settling clerk, what are his duties, and how does he perform them and what does he do?
Mr. Robbins: I object to that as it is—Is this question of the clearing house and settling work in relation to the clearing house governed by the Board of Trade?

Mr. Jenks: You say yes. A. The clearing house—
Mr. Jenks: It is not your say now, Mr. Robbins.
Mr. Robbins: That question is simply the basis for an objection.
The Master: I think as a basis for an objection he may ask it.

(Question read.)

A. Well, I think there are some rules governing the clearing house, but I don't know what they are.

Mr. Robbins: All right.
The Master: I imagine, Mr. Robbins, it would be competent to show that the rules were not followed.
Mr. Robbins: He is telling the usual course of business in which he did not participate.
The Master: He has hardly qualified himself for that.
Mr. Jenks: I had left that subject, and had asked another question on another case. I can produce witnesses who know more about it than this witness evidently does. I asked the witness what the duties of the settling clerk are, and how he performs those duties, in what manner?
The Master: Speaking generally of the settling clerks of all the firms, or this particular firm?
Mr. Jenks: All firms.
Mr. Robbins: I object to that.
Mr. Jenks: Of this particular firm.
Mr. Robbins: I object unless this witness was a settling clerk and performed those duties.
547 The Master: If he knows that he may testify, but I caution him to testify as to his own knowledge.

A. I never was a settling clerk of the Board of Trade, but I handled the accounts and know how it was done.
Mr. Jenks: How is it done? A. The settling clerk—

Mr. Robbins: Handling the accounts?
The Master: He says he knows how it is done.

Mr. Robbins: He don't say it.

Mr. Jenks: He says he knew how it was done. What is the matter with you this morning, Mr. Robbins? Was the foot-ball game too much for you?

(Question read)

A. The settling clerks congregate in the morning in the Board of Trade Building in the corridor, those representing the different houses with their settling books, and go from one to another and see who has wheat bought and who has it sold, so that they can ring it and get two or three people together, that is the way they settle.

Mr. Jenks: Then when the settling clerks ascertain who has wheat bought and who has it sold, what do they do?

A. Well, they make a memorandum in their ring book showing who it is that have bought and sold, putting the names of the parties down and the amount that is sold.

Q. What is a ring book?

A. A ring book is where they show the settlements, and bought and sold, and the prices.

Q. Under what circumstances can a ring be made?

Mr. Robbins: I object to that as covered by the rules.

The Master: I think that objection is sustainable, what they are made.

Mr. Jenks: As a matter of practice, the way they do.

The Master: That wasn't your question.

Mr. Jenks: How were and are the rings made on the Board of Trade?

548 Mr. Robbins: Objected to on the ground that that is covered by the rules.

The Master: The rules cover what is intended to be done; I again caution the witness to testify only of his own knowledge.

Mr. Robbins: I think if the witness is going to say something different—I think he should answer whether they are done any differently from what the rules provide?

The Master: He need not know what the rules provide. Answer.

A. For an illustration, he might have it bought and Mr. Hill might have it sold to me, and by paying the difference around and settling that way, that is what they call a ring.

Q. Under what circumstances is a ring made? Now I speak of a commodity and the option, same commodity and same option and the same quantity. Now describe how actually a ring is made on the Board.

A. Well, that is the way it is made, as I described there. After the ring is made the trades are entered in the ring book,

and the difference figured between bought and sold price and the settling price, and the difference is paid to the clearing house.

Q. In what way is the difference paid to the clearing house? What is done to lead up to that after the clerk has ascertained that the ring is made.

(Question read.)

Mr. Robbins: I object to that on the ground that no foundation is laid for this witness to testify on that.

The Master: He has been cautioned to testify only of his own knowledge. He may answer. Proceed.

A. Well, what is done after that? There is a check made—

Mr. Jenks: After the clerk ascertains that there is a ring, what does he do, goes back to the office, don't he?

A. Yes, sir.

Q. Well, what is done in the office?

549 A. That is entered, as I say, in the ring book in the office there, showing the amount paid and the amount sold, and the parties to the transaction, and the prices.

Q. Then what is done?

A. Then there is a settling price and the difference is figured between the bought and sold price, and settling price, and the difference is paid accordingly.

Q. What about the clearing house sheet, if anything, do you know anything about it?

A. Well, the clearing house sheet is a sheet showing the names of the members of the clearing house.

Q. And that clearing house sheet is made up in what manner?

(Question read)

Mr. Jenks: Answer the question.

A. It is made up by entering opposite the names of the different members, the differences, showing the amount from each one and the totals to be paid or claimed. They take the difference between the two, and pay or collect it, which ever it may be.

Q. Who furnished the blank clearing house sheet?

A. The clearing house, I think.

Q. Did you ever see the blank sheet furnished to the members of the Board of Trade?

A. They furnish them on the payment of so much, I think.

Q. They are furnished to the different members of the Board aren't they?

A. Well, they are furnished to those, who are members of the clearing house, and those who are doing clearing.

Q. Did you ever see one of those sheets? A. I have.

Q. Look at this paper, which I now show you and state what it is? A. Well, that is a clearing house sheet.

Q. A blank one?

A. Well, it is blank as far as any differences are concerned. There are no differences on there.

Mr. Jenks: I will offer this in evidence as defendant's Exhibit i, and the reporter will mark it.

The paper referred to was so marked.

Mr. Jenks: Where is the clearing house?

A. At the present time I think it is on the 7th floor of the Board of Trade building.

550 Q. Now we will suppose that Counselman & Day made up in the morning the ringing up of the transaction that I have spoken of with some other member of the Board of Trade, will you state how they fill out this clearing house sheet?

A. Well, in case the transaction is made with Henry Memory and the ring is Henry Memory and H. W. Rogers & Brother, they would note in here the amount claimed from one and pay the other, if it happened to be that way, or might put it in the amount collected from both of them.

Q. This sheet is headed in different columns. The first column at the left is "I claim from"; the next is "We owe to"; Now between those two columns are names running from Samuel O. Adams down to L. Everingham & Company. Then the balance of the sheet and headings are the same, and between the headings are the different names. Is there anything that is carried out on this sheet except the differences that result from ringing up deals? A. Not any that I know of.

Q. Will you state whether so far as the firm of Counselman & Day was concerned, all trades were conducted, and those that were rung up were rung up in substantially the same way that you have stated? A. Yes sir.

Q. How extensive was the business of Counselman & Day?

A. I couldn't tell you. It varied at different times.

Q. What kind of business was it that they were doing which varied as you say?

A. They are trading in grain and provisions on the floor of the Board of Trade.

Q. And all for future delivery?

A. Well the bulk of it was for future delivery. There might occasionally have been something that wasn't for future delivery.

Q. What proportion of the whole business that they did was for future delivery? A. Well, the bulk of it was.

Q. Can you fix the per cent?

A. No, it is so small that I couldn't.

Q. What was small?

551 A. The percentage of the business done that was not for future delivery.

Q. Well, how small would you think the cash business was?

A. Oh, I don't know. I couldn't tell you, it is very small.

Q. Did it amount to one per cent of their business?

A. Well, not much more than that, I guess.

Q. Then the business for future delivery that they did, how much of that was rung up before the time for delivery arrived?

Mr. Robbins: Wait a minute; this witness hasn't qualified himself to go in that. He hasn't shown that he kept that kind of books, or that he had something to do with making the trades himself.

The Master: If he knows of his own knowledge, he may state, otherwise not. I caution him not to state except of his own knowledge.

A. I couldn't.

Q. You can't make an estimate of it at all? What proportion of the trades for future delivery were rung up before the delivering time? A. Well, I can't give the proportion.

Q. How much would you think? Haven't you any notion about it.

Mr. Robbins: I object to that.

The Master: I doubt if that is competent.

Mr. Jenks: Now you conducted a business there for yourself, didn't you? A. No, I never did.

Q. Not for yourself? A. No sir.

Q. Did you work there for anybody, you being a member of the Board, so that you have any idea of the proportions of deals for future delivery that were rung up before the time for delivery arrived, and those that remained open until the time for delivery? A. Well, I couldn't tell you.

(Question read.)

Mr. Robbins: I object to that.

The Master: I think that is too indefinite, Mr. Jenks.

Mr. Jenks: Did you work for any firm where your position with the firm was such that you knew the amount of commodities delivered and what amount was rung up?

A. I did.

552 Q. What firm was that?

A. Well, there were several. There was Reynolds Brothers, Counselman & Company, and Counselman & Day.

Q. Take the business of Reynolds Brothers, what proportion of their deals on the Board of Trade resulted in delivery, and what proportion resulted in ringing up the deals?

Mr. Robbins: What firm is this, what firm did you say?
Mr. Jenks: Reynolds Brothers.

A. I couldn't tell now; it is so long since they have been in business here that I have forgotten.

Q. How frequently would those firms receive orders with a stop order or an order to stop the loss at any figure?

Mr. Robbins: I object: He hasn't shown that that is within his knowledge. He is calling for an opinion and it isn't shown that he had anything to do with the stop order part of the business.

The Master: If you know, you may answer.

A. Well, stop orders would be quite frequent.

Mr. Jenks: Was there any difference in the execution of any those orders, and those which were given without stop order?

A. Why an order that was given without any stop order was executed at the market and the stop order wasn't closed until the market reached that price, and if it was possible, stopped at that price, and if not possible, as near as could be.

Mr. Robbins. As near as you could in the market?

A. Yes sir.

Mr. Jenks: What my question was intended to mean was this: If a member of the Board of Trade with whom you were acting received an order for the purchase of a commodity, that order would be executed on the Board?

A. If possible.

Q. If they received the same order and connected with it an order to stop the loss at a certain price, for the purchase of the commodity, would they execute that?

A. They would, when the market reached that price,
553 the stop order price, or settle it as near that price as they could.

Q. Suppose the first order was to buy, and accompanying that order was a stop order, stop the loss, would that order to buy be executed, just the same as though no stop order accompanied it? A. It would.

Q. Then without any further order from the party, what would the Board of Trade member do if the price went down so as to reach the stop order price?

A. He would sell the amount that he had bought.

Q. And he would do that without receiving another order?

A. Yes sir.

Q. Then what sort of a report would he make to his customer?

A. Wire him saying that he had sold such a commodity at such a price and such an amount.

Q. Which firm were you connected with that did the largest business in options? A. Counselman & Day.

Q. Now haven't you any idea in their business from year to year, or from month to month, or from day to day, what proportion resulted in deliveries of the commodities bought or sold, and what proportion resulted in ringing up the deals and no delivery?

Mr. Robbins: Wait a minute; I object to that.

(Question read.)

Mr. Robbins: This witness hasn't shown that he has the knowledge sufficient to justify his guess at that. It isn't shown he has anything to do with the deliveries of Counselman & Day, or that he was bookkeeper so as to have sufficient notice of the amount rung up. He doesn't testify that they kept any books.

Mr. Jenks: Did you keep any books there? A. I did.

Mr. Jenks: He so stated before.

The Master: I understood that at various times, what he said, and he has been cautioned to testify from his own knowledge and not to guess. He may answer.

A. I can't answer that.

554 Cross-Examination

By Mr. Robbins:

Q. Mr. Nye, you say you were a member of the Board of Trade from '94 to '99? A. Or thereabouts.

Q. Now isn't this a fact, that the membership of the Board of Trade was put in your name by the firm for which you were working in order to qualify you to go upon the Board each day?

A. It was.

Q. And in that way the membership was actually owned by your firm? A. Yes sir.

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Q. And placed in your name that you might get access to the floor as a member? A. Yes sir.

Q. That is the only membership you ever had on the floor of the Board of Trade? A. Yes, sir, that is all.

Q. And when were you discharged by Counselman & Day?

A. About two years ago.

Q. You were discharged, were you not?

A. Well, I don't know as I can say I was discharged.

Q. They told you to go?

A. Simply that I didn't care for the position—

Q. What?

A. I said I didn't care about keeping the position.

Q. Didn't they discharge you or tell you they didn't want you any more?

Mr. Jenks: I object to that question if the Master please.

(Question read.)

The Master: He may answer.

A. They did after I told them I didn't care for the position. They told me if I felt that way about it, the only thing was to do was to let me go, if I didn't want to stay.

Q. While working for Counselman & Day, you were simply receiving messages over the telephone and sending them to the different pits? A. A part of the time, yes.

Q. You weren't in the pits at all? A. Not regularly.

Q. How far was the telephone from the pits?

555 A. Well at one time there was one probably within 15 or 18 feet, and then again it might be 100 feet.

Q. How long did you work for Reynolds Brothers?

A. About two years.

Q. In what capacity?

or

A. I was bookkeeper there, one of the bookkeepers.

Q. Now Reynolds Brothers, were one of the largest buyers of cash property on the Board, were they not?

A. Yes sir, they were.

Q Bought in very large quantities? A. They did.

Q. They carried the property they bought sometimes?

A. Well, occasionally it would be necessary to carry it for a short time.

Q. Where would they buy, in the country?

A. Buy it in the country and buy it in Chicago.

Q. When they bought it in the country a certain time intervened between the time of its purchase in the country and its arrival in the city?

Mr. Jenks: That is not cross-examination.

Mr. Robbins: What did they do in such cases, sell in Chicago?

A. In Chicago, and sometimes they might sell some place else.

Q. And they did sell to hedge against their purchases, did they? A. Yes sir.

Q. And in selling to hedge, they sold for future delivery?

A. Sometimes they did.

Q. Well, can you tell of any other way to hedge except on future delivery?

A. What I meant to say is, they didn't always sell for future delivery in Chicago.

Q. They would sell in the best market for it, sell to protect themselves on their cash property? A. Yes, sir.

Q. And when the property was received in Chicago, if they had sold in Chicago, they delivered, did they, on their future sales?

A. Sometimes they would and sometimes they wouldn't.

Q. If they could sell to better advantage in some
556 other way they would take in their hedges by buying, would they, and close them out? A. Yes sir.

Q. And that is the case of contracts such as you described as futures, is it?

A. Yes sir, the sale would be for future delivery.

Q. They did that very extensively, did they not?

A. Quite extensive.

Q. Practically covered all of their cash purchases by hedges of that kind? A. Generally.

Q. Were they buyers of corn and cribbers of corn in the country?

A. I don't know how it was about their cribbing, how extensive that was, but they were heavy buyers of corn in the country.

Q. They would sell against it in Chicago, by way of hedge?

A. They used to ship a great deal to New York. They would have it sold in New York and they would sell in Toledo.

Q. But in large quantities they sold for future deliveries in Chicago to hedge against the corn in the country they had?

A. Well, there was quite a good deal of that done.

Q. That was by the use of this same future contract you have testified about? A. What?

Q. By using the same future contract? A. Yes sir.

Q. Selling for future delivery on the Board of Trade?

A. Yes sir.

Q. And either deliver when the corn arrived in Chicago or taking in the hedge if they could sell to better advantage elsewhere, or ship it? A. Yes sir.

Q. When did you cease doing business for Reynolds in Brothers? A. It was, I think, either '87 or '88.

Q. Did you work for Charles Counselman & Company?

A. Yes sir, I did.

Q. What were your duties there?

A. I was looking after the receiving business there and attending to the cash business, and when he was president
557 of the Santa Fe Elevator & Dock Company, I had charge of the Santa Fe Elevator & Dock Company books.

Q. Charles Counselman at that time, is the Counselman of Counselman & Day? A. Yes sir.

Q. Charles Counselman was the owner of large elevators at the time you worked for them? A. Yes sir.

Q. They bought grain in large quantities in the country and shipped it in Chicago? A. Yes sir.

Q. They owned large quantities of grain and had it in their elevators? A. Yes sir.

Mr. Jenks: That is not cross-examination. I asked nothing about Charles Counselman & Company, I asked about Counselman & Day.

Mr. Robbins. I am coming to them. Those two firms, they are practically one, one member of both firms.

The Master: The objection is overruled.

Mr. Robbins. One dealt in cash stuff and the other in options.

The Master: Objection overruled.

Mr. Robbins: Answer the question.

(Question read.)

A. They had in the past,—I don't know—

Q. They did have while you were with them? A. Yes sir.

Q. And what was the elevator capacity of their elevators while you were with them?

A. I couldn't tell it without looking it up to see.

Q. Well, approximately?

A. Well, the Santa Fe elevator I think had a capacity of about a million. They had an elevator in Englewood that used to hold somewhere in the neighborhood of a quarter of a million, and the Rock Island elevator, I don't know what that capacity is, but I think about a million and a half, I am not sure. All of those I have the capacity of in my book, if you want to get that exactly.

Q. I am willing you should look into your book and see. Give us the correct capacity briefly.

558 The Master: The total footings if you have that there?

A. Well, here is the South Chicago elevator with a capacity of two million, five hundred thousand. That is one of Charles Counselman's elevators, under the name of South Chicago Elevator. I haven't got the Santa Fe elevator on there. Well, that is the only one—the Rock Island elevator A, is a million. That is all of Charles Counselman's elevators that I have on there.

Mr. Robbins: Now, in round numbers, what would be the total capacity. You are giving bushels, I suppose. In bushels, the elevators at the time you worked for them?

A. As I say, I don't remember just what it was.

The Master: His figures are in there.

Mr. Robbins: Now Charles Counselman & Company not only bought corn in the country, but also carried corn in their own elevators, when it was in Chicago? A. They did.

Q. Carried it right along from season to season.

A. Well, I don't know as you could say from season to season.

Q. They were always carrying large quantities of grain in their own elevators were they not? A. Yes sir.

Q. Did they sell on the Board of Trade against that grain?

A. Yes sir.

Q. Put out what is called a hedge? A. Yes sir.

Q. To protect themselves against the fluctuations of the market? A. Yes sir.

Q. It was their practice to put out hedges against the grain they carried, was it not? A. They generally did.

Q. And it is true that they had corn cribs in the country?

A. Yes sir.

Q. Did they crib large quantities of corn? A. They did.

Q. And carried through the winter in cribs, did they?

A. Yes sir.

Q. And bring it into the market in the spring?

A. Yes sir.

Q. Put it in their elevators?

A. They might put it in their elevators, and might ship it east. I can't tell what they would do with it.

559 Q. When they got the corn in their elevators, they would deliver it some time or other. They delivered it all the time.

A. Some time or other. They wanted to carry as much as possible in storage.

Q. They kept large quantities all the time and hedged against it in the Board of Trade—that is right, isn't it?

A. Yes sir.

Q. And they did, from time to time, sell large quantities as hedges on the grain that came in from the country?

A. Well, they generally hedged their purchases in the Chicago market; they might make the sale somewhere else.

Q. Now on those hedges. They were the so-called contracts for future delivery, such as you have testified to? A. Yes sir.

Q. Made in the different pits of the Board of Trade?

A. Yes sir.

Q. By the way, who made those?

A. Well, the gentleman who got the order,—they were generally made—in fact they were always made by some member of the Board of Trade. Not necessary to have been made by an employe of the firm, it might have been some broker on the Board.

Q. And frequently made by this firm of Counselman & Day, were they not?

A. Counselman & Day have made some trades for them, but I can't recollect any particular one.

Q. Haven't Counselman & Day made large numbers of these hedging trades for Counselman & Company during the time you were there? A. Not that I know of.

Q. Some of those future trades of Counselman & Day, were hedging trades for Charles Counselman & Company?

A. Not that I know of.

Q. You wouldn't know whether it was so or not?

A. No, I wouldn't know if they filled any orders for any member.

Q. That is to say, your relation with the business wasn't such—

A. Counselman & Day—any one in there wouldn't
560 know what Charles Counselman & Company were selling in particular for us. They wouldn't know the reason.

Q. I am asking you a fact, whether Counselman & Day didn't make large sales for future delivery for Counselman & Company? A. I say, not that I know of.

Q. Well, were you in a position to know?

A. Well, I was. Well I have made no trades for Counselman & Company. I had the customers' ledger, that I was keeping there, and I would have seen all the trades.

Q. How long did you work for Counselman & Day?

A. About five years.

Q. While you were working for Counselman & Company, and these hedges were made against the property that they had in the country, and that was in their elevator, they would be made upon the floor of the exchange in the same way that these transactions that you have testified to as having been made by Counselman & Day?

A. If it was hedged in Chicago, it would, the trades would be the same.

Q. Might be contracts for future delivery? A. Yes sir.

Q. And those sheets kept by Counselman & Day, in the same way— A. Clearing house sheets?

Q. Yes? A. Yes.

Q. They availed themselves of the clearing house of the Board of Trade the same way as Counselman & Day do?

A. Yes.

Q. And to adjust these hedging contracts? A. Yes sir.

Q. They went in the clearing house scheme the same way that all other traders did? A. Yes sir.

Q. Provided that there was no delivery of the property?

A. Yes sir.

Q. By the way, this ring process. You suppose a so-called ring including three members. Can there be any such ring or any ring on the Board of Trade in which a member participates who has not both bought and sold?

A. No, there can be none, it can't be unless he has bought such and sold.

561 Q. Then it is only in cases where a man has bought property and subsequently sells it, or sells property and buys it, the second trade being made before the time for delivery arrives that a ring occurs at all? A. Yes sir.

Q. And it is only when all parties participating in the ring consent to this off-set in the trade?

A. Yes sir, when each party in the ring has bought and sold.

Q. And is willing to off set? A. Yes sir.

Q. In other words it requires the consent of every party before there is any off-set? A. Yes sir.

Q. It is a voluntary matter? A. Yes sir.

Q. If any member has bought property and sells it again and wishes it to force it to come to him, he may prevent having those trades rung up by standing on his trades? A. He could.

Q. What would happen if he did do that?

A. Sometime during the option the seller would deliver the article.

Q. He would have to under the rules of the Board of Trade?

A. Under the rules of the Board, he would have to.

Q. In every case where a purchaser bought on the Board of Trade and stood on his trade, it would result in a delivery if he did not subsequently wish to ring up or close it out by an off-set. A. Yes sir, it would.

Q. And it couldn't be rung at all, unless he made a sale subsequently? A. No sir.

Q. Now take the case you supposed of three members, each of whom have bought and sold the same quantity of grain for delivery in the same month. Suppose there was no provision for ringing at all provided, what would happen, how would those trades be closed out?

A. The grain would be delivered in the shape of warehouse receipts, for whatever it might be.

Q. The man starting the delivery would deliver to one of the others, and that other would deliver to the other man again, and that man would deliver back to the first man? A. Yes sir.

Q. So that the result of the transaction will be that the warehouse receipt will be passed around into the hands
562 of the other two and come back to the original party?

A. Yes sir.

Q. Now it is to avoid that formality that this system of off-setting was adopted, is it not?

A. Well, I don't know as it was entirely for that purpose.

Q. That is one of the good results that follow from this off-setting, is it not? A. Yes sir.

Q. The removal of the formal deliveries that would result in the grain coming back to the party who starts the delivery, is that right? A. Yes sir.

Q. And you say these rings—there are rules of the Board of Trade that provides specifically for and under what circumstances this settlement by off-set or ringing, as you call it, can be made? A. I don't know what the rules are.

Q. But you know there are rules, do you not?

A. Yes sir,—I don't know. I presume there are, but I don't know, I never read them.

Q. Have you been a member of the Board of Trade for five years and don't know that there are rules covering this subject of ringing? A. I don't know what they are.

Q. I asked you if you know whether there are rules in existence, and were at the time you were a member of the Board of Trade, covering this subject of rings.

A. Well, I can't say that I do, because I never read them.

Q. You don't know whether there were any rules or not?

A. I don't know, I never read them.

Q. You don't know whether there were rules or not covering that subject?

A. I say I don't know. I never read them.

Q. You don't know what?

A. I never saw any such rules.

Mr. Jenks: I object to all this examination as not being a proper cross-examination.

The Master: I think it has gone far enough. The witness has stated several times that he hadn't read any of the rules of the Board of Trade.

563 Mr. Robbins: In the case of this stop loss order, suppose the order where the purchase was ordered to stop at seventy-four, and the market closed the night before at seventy-four and a half and opened the next day at seventy-three and a half, at what price would the trade be closed out?

A. Well, according to the way the trades I have seen, it would be closed out at seventy-three and a half cents.

Q. It would be closed out at what the market was the next day? A. Yes.

Q. There would be no such thing as closing out at seventy-four? A. As near as could be.

Q. You are familiar with this system of bucket shops, are you, in that respect? A. I never was interested in one.

Mr. Jenks: I object to that as not cross-examination.
The Master: Well, that question may stand.

Mr. Robbins: I didn't ask you whether you were interested or not. Are you familiar with the method of bucket shops with respect to the method of closing out these trades by stop orders?
A. I don't know anything about bucket shops.

Mr. Jenks: I will admit, if you want to, that they close them out the same way the members of the Board of Trade do.
Mr. Robbins: But they do not.
Mr. Jenks: They are identical.

Mr. Robbins: Who asked you to come here to testify?
A. I think it was Mr. Proudfoot.
Q. What do you do now?
A. I am not doing anything at present.
Q. How long have you been engaged in the business of doing nothing? A. Two years.
Q. Where do you spend your time?
A. Part of my time I spent in the hospital, a part I spent in the hospital and part in my room and since I have been able to get up and go around, I spend a good deal of my time on the Board of Trade.
Q. Not on the floor of the exchange?
A. In the visitors room.
Q. And in the corridors of the Board?
564 A. Yes sir, part of the forenoon I spend in the visitors' room.
Q. This settling price that you spoke of, in reference to ringing up, that is what you would call the figuring price, is it not?
A. Well, I think they figure it from the bought and sold price and the settling price.
Q. It is only to bring their accounts together and one figuring price has to be adopted each day and all members of the clearing house figure to that price? A. Yes sir.
Q. That is what you understand by the settling price?
A. Yes sir.
Q. It is the figuring price? A. Yes sir.
Q. It doesn't in any way change the amount one firm owes to the other, or the amount that they set off as between themselves?
A. It doesn't affect the bought and sold price in any way. That is the way it is done.
Q. For the convenience and speed and adjustment in the clearing house is that it? A. Yes sir.

Q. All the men who make their returns on sheets of this kind figure to a certain price each day, do they? A. Yes sir.

up

Q. And the entries in here are based on that figuring price, is that right? A. That is right.

Q. And that price is fixed by somebody every day?

A. Yes sir.

Redirect Examination

By Mr. Jenks:

Q. Mr. Nye, have you been sick for the past two years?

A. I haven't been sick all along, part of that time. I was injured in an accident and had my ankle broken and that confined me to the hospital for several months.

Q. About these hedging deals, if a man buys grain in the country and has it on hand, and he sells it on the Board of Trade as a hedge, how does he close out that hedge as a rule?

Mr. Robbins: That is calling for a general opinion of the witness and he isn't qualified.

Mr. Jenks: But you went into that.

The Master: If the witness knows what the practice
565 of the members of the Board of Trade are he may answer.

(Question read.)

Mr. Robbins: That calls on the witness for an opinion as to how members of the Board of Trade with whom he has had no connection, closed out as a rule?

The Master: It is a fact if he knows it is a fact.

Mr. Robbins: No man can know that. How can he say what the rule is as to Armour & Company, if he hasn't worked for them. If he is confined to the firms he has worked for it is

to

different, but not others.

The Master: Confine your answer to the firms you have worked for.

Mr. Jenks: How do they close out the sale for a hedge?

A. Well, eventually it will be bought in or the grain will be delivered on the contract.

Q. Now what proportion would be closed out without a delivery? A. That I couldn't tell you.

Q. And if it was closed out without a delivery, how would they settle the sale on the purchase back?

A. Through the clearing house on the difference in the market, the bought and sold price, and the delivering price, not the settling price.

Q. Supposing a man has on hand in an elevator actual grain, and he sells a quantity on the Board of Trade for future de-

livery and then he ships that grain from the elevator away from Chicago, ships it all out, so that he hasn't any here, how does he close his hedge on the Board?

A. Well he sells his grain in some other place; buy the option here that is sold on the hedge.

Q. How would he close out the option that he bought in?

A. Close that by paying the difference or collecting the difference through the clearing house.

Q. You were asked about a man being in a ring where he had a purchase and sale of the same commodity, for the
566 same delivery, refusing to ring up his deal or standing one his contract and requiring delivery. What proportion of transactions on the Board [—] Trade where they have rings are settled by a ring and what proportion does the man stand out and insist upon delivering?

A. I couldn't answer that question.

Q. Because you don't know?

A. I don't know what the percentage would be.

Recross-Examination

By Mr. Robbins:

Q. Mr. Nye, there can be no settlement unless all the parties to the settlement have both bought and sold? A. No sir.

Mr. Jenks: That is what he said before.

Mr. Robbins: When either of the parties has grain for delivery, he doesn't figure on such a ring?

A. If the grain is delivered, he doesn't figure it as a ring.

Q. Where a party has grain on a hedge and delivers it on the hedge, he doesn't figure in this settlement at all.

A. That is just the delivery price each day.

Q. Does he figure in one of these rings?

A. He doesn't figure on any three-cornered settlement. He figures on the delivering price, whatever that is, on the amount he has sold.

Q. In case he delivers, he doesn't figure in any of these offsets you have described, does he? A. He pays through.

Mr. Robbins: I move that be stricken out.

(Question and answer read.)

The Master: Let him answer that question, yes or no.

Mr. Robbins: I move to strike out the answer.

The Master: You may answer yes or no.

Mr. Robbins: The answer goes out.

The Master: The answer goes out.

A. Well, he doesn't figure in any ring, as you call rings.

(Answer read.)

Mr. Robbins: Well, now, in case a man who has hedged subsequently concludes to close out his hedge, and disposes
567 of his grain elsewhere, it doesn't necessarily follow, does it, that he would be able to ring up his two trades?

A. No, it doesn't necessarily follow.

Q. The party to whom he had bought and sold might still refuse to go into the ring and have a delivery to him.

A. It might be delivered.

Q. So it isn't true that every time a man takes in a hedge that he is able to effect one of these rings?

A. Not necessarily, no.

[—] That would depend on whether the parties to whom he bought and sold preferred to off-set the trades rather than deliver? A. Yes sir.

Mr. Jenks: Did you ever know a case where a party refused to enter into a ring, settle by a ring?

A. Yes sir, I have.

Q. How frequently do those things occur in transactions?

A. Not very often that I know of.

Q. Where there are rings, did you ever know of one in a thousand where they refused to enter into the ring?

Mr. Robbins: You mean where the man has both bought and sold?

Mr. Jenks: Where there is a ring, did you ever know one man in a thousand rings to refuse to ring up according to the settlement price?

A. I couldn't say that I did. They are perfectly willing to settle.

Q. Aren't the members of the Board of Trade looking for a chance to ring up their deals?

Mr. Robbins: I object to that.

Mr. Jenks: Isn't it the practice there to ring up deals without any delivery?

Mr. Robbins: Wait a minute. I object to that.

John S. Watson, a witness called on behalf of the defendant, being first duly sworn, and examined in chief by Mr.
568 Jenks, testified as follows:

Q. Will you state your full name?

A. John S. Watson.

Q. Where do you live? A. Chicago.

Q. Whereabouts? A. Stag Hotel.

Q. That is situated where?

A. It is a half a block over here on Van Buren Street.

Q. How long have you lived in Chicago? A. 31 years.

Q. What has been your business?
A. Mostly Board of Trade business.
Q. For how long a time were you doing Board of Trade business?

A. I was connected there between 12 and 13 years, all of which time I was connected with the Board of Trade. I was in business for myself for two or three years, and I was employed by McReynolds & Company for a few years.
Q. What was the business of McReynolds & Company?
A. Commission business, elevator owners.
Q. And what was your own business while you were doing it for yourself? A. Brokerage on the Board.
Q. Were you doing a commission business? A. Yes sir.
Q. In what capacity have you done business on the Board of Trade? A. Exchange.
Q. On the floor of the Exchange room of the Board?
A. Yes sir.
Q. Will you state, if you know, how business for years has been transacted on the floor of the Exchange room, of the Board of Trade?

Mr. Robbins: Wait a minute. We withdraw the objection.

(Question read.)

A. Well, that is a pretty wide question. I don't know just what you are trying to get at.
Q. O, well, commence with a transaction of business there and go through with it if you know.

Mr. Robbins: Confining yourself to your own knowledge.

A. You want me to tell it as a broker or a customer, or what? We are supposed to be there at half past nine in the
569 morning. When the bell taps, I am supposed to be there and look for business. If a man wants to employ me he comes and says, do so-and-so at a certain price, either that or a message; I go into the pit and report it to him, and as far as I am concerned that is the end of it.
Q. How do you fill it? A. Buy or sell it.
Q. How do you sell it?
A. I walk to the edge of the pit and some man offers a price, they usually do, and I take it and put it down on my card, make a memorandum of it.
Q. What does the other man do?
A. He puts it down on his card also, on the opposite side of the card.
Q. Who are the traders there? A. Members.
Q. Anybody else? A. No sir.
Q. Now what is the pit? Take the wheat pit? What sort of a place is the wheat pit?

[--] I don't know as I can explain it. There are a number of steps.

Q. It is octagonal in shape? A. Yes sir.

Q. And composed of steps and a platform elevated to what height? A. Possibly four feet.

Q. And where are the members of the Board who want to trade? A. Where are they?

Q. Yes? A. They are right there.

Q. Standing where? A. All around, inside and outside.

Q. Upon it? A. Yes sir.

Q. They station themselves so that they can all be seen?

A. Yes sir.

Q Now you go in there, and you want to buy something, what do you say?

A. You make a bid for it, unless some one happens to offer it at the price you want to pay for it.

Q. And if he offers it at a certain price?

A. You make a motion to him and make him understand your bid.

Q. And you do what?

A. Make a memorandum on the trading card.

Q. And what does he do?

A. Makes a memorandum on his trading card.

570 Q. Each party has a trading card? A. Yes sir.

Q. What is on that card?

A. Well, there is generally the name of the firm whom this man represents, either in his own name or his firm name at the head of it.

Q. On one side is what? A. Both sides.

Q. Then there is "Bought" on one side or a "B", and generally an "S" for "sold" on the other side, any way to designate it.

Q. Then if you have bought you put it on the "bought" side of your card? A. Yes sir.

Q. And if the other man has sold where does he put it?

A. On the "sold" side.

Q. Then after that is done, the purchase or sale, what is the next thing so far as you are concerned?

A. That is the end of it.

Q. You have just one order to fill when you go in?

A. Yes, sir, I report it to my customer.

Q. You have this one order to fill?

A. Provided I have only one order, yes.

Q. Now go on with that transaction?

A. Well, as a broker, that finishes me.

Q. That is the whole thing. Now as a broker you go in there as a rule, do you have but one order when you go in on the market?

A. Sometimes, and sometimes no orders, other times one order.

Q. And during the day do you get other orders?
A. Yes sir.
Q. From where? A. Members, fellow members.
Q. And you complete for them other transactions?
A. Yes sir.
Q. You conduct the other transactions the same way?
A. Yes sir.
Q. Now with reference to this purchase that you make when you first go in, what becomes of that during the day of what may become of it?
A. After reporting it to my customer, I give him the card stating the member with whom I made this transaction. This is turned into his office, and he can do as he pleases with it; so far as I am concerned that is the end of me.
571 Q. Now, would you go in there with this one order from one customer,—suppose you had an order to sell as well as to buy, then what would you do, same commodity and the same delivery? A. Certainly—
Q. What would you do then?
A. Buy one and sell the other.
Q. Same commodity same delivery and the same amount?
A. Yes sir.
Q. You would buy and sell at the price that you would be able to there on the floor? A. Yes sir.
Q. Now you go on with your business, trading all day long, and at the end of the day, what do you do as to reporting of any business as to what has been done?
A. Well, if I have not already tendered my customer his card of the trade, I have made with him, I might go over to his office with it then.
Q. Yes. Now suppose that on the floor you had bought for one customer and sold for another, and afterwards you would find that you could ring up those deals on the Board, what would be done?
A. I couldn't ring it up, as a broker, I have nothing to do with that.
Q. You have acted for commission houses haven't you?
A. Yes sir.
Q. What did they do?

Mr. Robbins: Wait a minute.

Mr. Jenks: What commission house did you act for?
A. McReynolds and Company.
Q. Take the business of McReynolds & Company, what did you do for that firm?
A. I had the option,—I had what is called the option books. Added up the trades and checked all the trades, and checked the difference.

Q. What is the option book?

A. It is a book in which they enter up the name of the party with whom the trade was made, and the price, the quantity and for whose account.

572 Q. Is that book kept as between McReynolds & Company and their customer, or is it kept as between McReynolds & Company and some other members of the Board of Trade?

A. Between the members and it also gives the name of the customer for whom the trade was made.

Q. Now take this transaction and commence with that, and go clear through to the end of the transaction with McReynolds & Company state how everything is done?

A. Well, after the trade has been made and entered onto the card, the card is turned into the office, to the man who keeps this option book, or option journal, or whatever you call it. He enters the day, the name of the party who the trade is made with, the quantity and the price.

Q. And then what?

A. Why it remains there until the stuff is delivered, or settled up.

Q. How may it be settled up? A. By ring settlement.

Q. How is a ring made, or settlement?

A. Why it is made by the settling clerk.

Q. Who employs the settling clerk? A. The broker.

Q. What are his duties?

A. His duty is to look after the trade to see that they are cleaned up or settled, as the case may be.

Q. Cleaned up how, or settled up how?

A. Get them so that the difference may be collected or paid, or the stuff delivered as the case may be.

Q. What difference may be paid?

A. The difference between the purchase and sale price.

Q. Now we will say that these transactions on the Board are had to-day, the 29th day of November, suppose the transactions are in May wheat, that would be wheat for delivery next May. After the purchase is made, it is put down on the option book is it? A. Yes sir.

Q. How long does it stand there on the option book?

A. Stand there for all time, I suppose.

Q. I mean that purchase. How long does it stand there open.

A. It stands there open until such time as it may be sold or delivered.

573 Q. It wouldn't be sold before May, would it?

A. No sir.

Q. Now as a rule, what do they do with those transactions?

Mr. Robbins: Who do?

Mr. Jenks: McReynolds & Company?

A. As soon as possible they are settled.

Q. Settled by— A. By ring.

Q. And a ring is made how, and who ascertains that there is a ring?

A. Settling clerks make the ring; if he knows who it is bought and sold to, he goes to the other party to whom it is bought or sold, and between them they can make this ring, whereby each one has got a "bought" and "sold."

Q. And when a settling clerk finds that there is such a ring what does he do?

A. He enters it in his book, and the next day there is the difference paid or collected as the case may be.

Q. What machinery is gone through with to get that difference paid or collected?

Mr. Robbins: Wait a minute. That machinery is provided by the Rules of the Board of Trade, and I submit that the rules are the best evidence.

Mr. Jenks: As a matter of practice, I am inquiring about.

Mr. Robbins: Let me ask a question.

Mr. Jenks: I object. I object to your asking questions.

The Master: I think your first question was bad, Mr. Jenks, but your amendment of it may stand.

Mr. Robbins: Then I ask the privilege of asking a question. I want to base an objection upon the question.

(Question read.)

Mr. Robbins: I would like to ask a question whether that machinery is provided for by the Board of Trade.

Mr. Jenks: I object.

The Master: Sustained. It is a question of what is actually done.

Mr. Jenks: What do they do after they find that there
574 is a ring there, what is done by McReynolds & Company?

A. His clerk figures the difference on it and passes a slip what they call a check slip, for the difference through the clearing house.

Q. That is just what I want to find out. What does he do?

A. He sends the slip through the clearing house to the party with whom he has to collect or pay, stating the amount, and they pay so much or collect so much.

Q. What do McReynolds & Company do the next morning as to the clearing house?

A. Why they either pay or collect as the case may be.

Q. I want to get at that, what do they do?

A. Why, they check the difference.

Q. They make out a clearing house sheet? A. Yes sir.

Q. That is what I want. Now, how do they make out that sheet?

A. There are two columns on the clearing house sheet, one is "bought" and the other is "collected."

Q. Take this Exhibit 1, that is already in evidence, and describe what they do upon that sheet?

A. In the first place, they put down the date, put down the name of the firm—

Q. That is, McReynolds & Company?

A. Yes the firm has to make this report, and if you have a claim against any of these parties, why you put it down in this column here, the claim column; if you owe them, you put it in this column; you total that up, and foot it up, and if you have to collect, you put in the claim to the clearing house for the net amount; if you owe them, you make out a check, certified, payable to the clearing house, and deliver it there at the Exchange.

Q. And the figures which are put down in the clearing house sheet are made up of what, in the one transaction?

A. Why it is the net difference you may have with any one party. It may be half a dozen items, and it is the difference you have collected from this man.

575 Q. And that difference is the difference between what? A. Between purchases and sales.

Q. That is, it shows the profit or loss in the transactions?

A. Yes sir.

Q. It don't show anthing else but profit and loss?

A. That is all.

(Two last questions and answers read.)

Mr. Jenks: After the clearing house sheet is made up what else do McReynolds & Company make that goes to the clearing house?

A. A check or requisition on the clearing house for the difference, to collect.

Q. And what else do they make that they send to the clearing house? You spoke of the clearing house slip?

A. Not anything at that time. You don't send anything at that time.

Q. Do they send anything to the other firm?

A. They send the check slip, yes.

Q. How is that sent?

A. Sent in an envelope addressed to the other party. The clearing house is just a sort of Post Office.

Q. Then what do McReynolds & Company deliver to the clearing house?

A. The amount of all the trades they have made during that day, also the difference they may have to pay the next day.

Q. What they deliver to the clearing house is: The clearing house sheet, a check, if any is coming to them, coming to the other party, and also the contents of the envelope that is addressed to the other broker. Now what is there on that paper that is addressed to the other broker?

A. There is the date, his name, the quantity of stuff that you have been trading with him that day, and the name of the firm who makes the trade.

Q. Now we will suppose that a purchase was made by McReynolds & Company, of 10,000 bushels of wheat of some other member of the Board, and that member of the Board sold the thing to some other member; that member to some other member, and that to some other, and there was six sales, the
576 last sale being to McReynolds & Company, would that make a ring? A. Yes sir.

Q. Suppose that was closed up in that way, you have narrated through the clearing house, would that end the purchase and the sale made by McReynolds?

A. That would be the end of it as far as the clearing house was concerned, and as far as the one member is concerned.

Q. Now what proportion of transactions in futures on the Board are rung up in that way?

Mr. Robbins: Wait a minute. Confine it to the firm he works for.

Mr. Jenks: Do you know what proportion generally is closed up in that way?

A. Well, that varies considerably.

Mr. Robbins: Wait a minute.

Mr. Jenks: For the present, I will waive that. What proportion of the trades conducted by McReynolds & Company were rung up in that way?

A. I couldn't say, very small though, very small percentage.
[—] What would be a small percentage. A. 5%.

Q. What is a small percentage of their trades, that are rung up? A. Deliveries are a small percentage of the total.

Q. How small?

A. That is a good guess when I say five per cent. Very small amount.

Q. What proportion of their trades were rung up through the clearing house in the way that you have described?

A. The bulk of the business was rung up.

Q. Is it any different with McReynolds & Company than it is with other members of the Board of Trade who are doing a speculative business in futures?

Mr. Robbins: Objected to.

Mr. Jenks: I will go ahead. During the time that you have been operating on the Board of Trade, what proportion of the transactions there have been rung up without any delivery, and what proportions have the commodities been delivered?

577 Mr. Robbins: Objected to.

Mr. Jenks: Have you any idea?

Mr. Robbins: Same objection.

Mr. Jenks: Have you ever worked for yourself or for any commission house where they received orders to buy or sell for customers?

A. I have worked for them, yes, I did, but I didn't handle any of them. I handled—

Q. Do you know how they transacted the business relating to that?

Mr. Robbins: Wait a minute; I object to that if he didn't handle them. How does he know?

Mr. Jenks: Do you know anything about it?

A. I have handled orders for Armour & Company for their own account, but not for customers.

Q. I am speaking of customers in the commission business?

A. I have done it.

Q. Do you know anything about stop orders? A. Yes sir.

Q. What is a stop order?

A. A stop order is to stop the loss at a certain figure, providing the stop is put so and so, and you want to stop it, and you stop it at that price.

Q. Now we will say any customer gives an order to a member of the Board of Trade to buy and he wants to stop the loss, what does he do?

A. Why he tells his man, his broker, to stop that at so and so, so I will lose just so much money on it.

Q. What does the broker do?

A. When it gets to that price, he closes out at that price or as near as possible.

Q. How does it close it out?

A. If he has it to buy, he sells it, if not, he buys.

Q. And how does he do finally with the transaction on the Board of Trade? A. It is either delivered or rung up.

Q. What is the proportion of the deliveries to the amount rung up?

Mr. Robbins: The same question and it is objected to.

Mr. Jenks: Then what does he do as to his cus-
578 tomers after he has closed it out?

A. Well, wire his purchase or sale, showing the loss or the commission added, and also the revenue tax.

Q. Did you ever know any commission house doing business on the Board of Trade that wouldn't execute orders that contained a stop order to stop the loss?

A. No sir, I never did.

Q. How many commission houses—members of the Board of Trade—do you know that do execute those orders?

A. Why, I expect they all do.

Q. And for how long a time have they continued to do that to your knowledge?

Mr. Robbins: If you know anything about it?

Mr. Jenks: Ever since you have known anything about the Board? A. Yes sir.

Q. Do you know whether members of the Board of Trade of Chicago keep offices in this city? A. Yes sir.

Q. Do you know any members of the Board of Trade who have their offices in the Board of Trade building?

A. Yes sir.

Q. How many do you know that have offices in the Board of Trade Building? A. How many do I know?

Q. Yes?

A. I couldn't tell you. There must be a whole lot of them, fifteen or twenty.

Q. Well, your best judgment?

A. Well, you mean members or firms?

Q. Firms, where they have a member of the Board, firms, commission firms, that have their offices in the Board of Trade building?

A. I know pretty near all of them, and there must be forty-five or fifty.

Q. In different rooms of the Board of Trade Building?

A. Yes sir.

Q. Do you know whether any of those firms in any of those offices have blackboards? A. Yes sir.

Q. What do they enter on the blackboards?

A. Quote the market there of stocks and grain and provisions.

Q. Do they quote the market from the Chicago Board of Trade? A. Yes sir.

379 Q. How many of those firms do you know that have blackboards?

A. Five in the Board of Trade Building.

Q. Any others? A. Yes sir.

Q. How many of those firms have large numbers of chairs for customers to occupy?

A. On the ground floor alone there are five.

Q. And what sort of a place is one of these places? Describe it, the blackboards, the chairs and what else?

A. Why, that is about all there is except the chairs and the books and the ticker there.

Q. In the most of those places where the blackboard is, is it a large room? A. Yes sir.

Q. How many chairs would you say there are in front of the blackboard? A. Twelve or fifteen.

Q. Which way do the chairs face, toward the blackboard or away from it? A. Toward the blackboard.

Q. And as a rule, during business hours on the Board are those chairs occupied? A. Yes sir.

Q. When the market changes the quotations are put up on the board and the customers sit there looking at the market prices. Do the customers there do anything?

A. They can if they wish to.

Q. What do they do?

A. To make a trade, I suppose they find the man who has charge of that.

Q. Then what do they do?

Mr. Robbins: Charge of what, the bucket shop?

A. Charge of the office. He takes the orders and sends them up to the floor by a messenger boy.

Mr. Jenks: And then, Mr. Customer, if he sits down after giving that order finds the market is—the commodity that he has bought has gone up, what then may be done there?

A. He may sell out if he pleases.

Q. How does he do that?

A. He gives the order to the same man probably who received the order—

Q. After he sells out what is the mode of settling or
580 closing up the two transactions with the customer?

A. Providing he makes a profit he is handed a check less the commission and revenue charges.

Q. A check for what?

A. For the difference between the sales.

Q. The difference in price between the purchase and the sale deducting the commission and deducting the revenue stamp? A. Yes sir.

Q. Now is that the usual course of business with every one of the commission houses that has a blackboard?

A. Yes sir, that is it, that is the mode of business conducted by all of them.

Q. Up on the floor of the exchange room of the Board of Trade do you know how the market reports are gathered? My question is, whether you know?

A. Know how they are gathered? I know who gets them,

Q. Do you know how they are gathered? A. Yes sir, I do.
Q. How are they gathered?
A. A man there, a quotation clerk, sits in a little raised elevated place built for him and he watches the market.
Q. Near what place? A. The edge of the pits.
Q. Near the pits? A. Yes sir.
Q. And the market reports are sent out from there, reports on the market made at the pits? A. Yes sir.
Q. Transactions at the pits? A. Yes sir.
Q. Now we will suppose this man down in the office by the blackboard has made a purchase and the market has changed and he may sell, you say if he has made a profit he gets the check for the amount. Suppose he has made a loss, then what?
A. Then he has to give his check or currency to settle it.
Q. For what amount?
A. For the amount of money that is lost between the purchase and the sale prices, also the commission and the war tax added.
Q. Do you know anything about the requirements of members of the Board of Trade who are doing a commission
781 business that their customers put up a margin in advance? A. Yes sir, I do.
Q. What is the fact about that? Are margins required or not?
A. Sometimes they are and sometimes they are not required.
Q. They are not required under what circumstances and where they are required, under what circumstances do they require a margin?
A. As a commission man, if you know that a man is thoroughly responsible, you probably wouldn't ask him for any margin.
Q. If you know he is good? A. Yes sir.
Q. If he is not good, then what?
A. Then you have to have his money.
Q. He would have to put up his money when?
A. Before he makes the trade.
Q. Then after the trade is made, suppose it is a purchase, when made he closes out that trade in the usual course of business if he wants to? A. Any time before 1:15.
Q. Any day. Suppose he has made a purchase of 10,000 bushels of wheat for May delivery. Suppose his transaction is on the 29th day of November, 1901. When may he close out that transaction? A. Any time he pleases until May.
Q. Any time he pleases? And he may close it out any time he pleases by selling the same commodity for the same delivery?
A. Yes sir.
Q. At the price he can get up stairs? A. Yes sir.

Q. And settle that transaction by merely receiving or paying the difference in the market price, less the commission and the revenue stamp.

Q. Well, you say that a customer who makes a purchase today of May wheat, deliverable next May, makes that purchase with or without the understanding that he may close that out by sale at any time when he pleases.

Mr. Robbins: Read that question. (Question read.)

Mr. Robbins: I object to that. This witness says he wasn't connected with a house that did a commission business;
582 that he was connected with Armour and he didn't have any such thing.

Mr. Jenks: Did Armour have any such thing? A. No sir.

Q. Did Armour & Company at any time, while they were dealing there on the Board have a good deal of stuff in their possession which they hedged on the Board of Trade?

A. Oh, yes.

Q. Now will you describe a hedging deal?

A. Why in the provision business or the packing business they buy live hogs every day, hog packing business. In order to protect themselves, they have to sell something on the Board of Trade.

Q. For future delivery?

A. For future delivery, yes. So that they sell and they get the
from that price that they can pack at.

Q. Pack lard, ribs or whatever the case may be?

A. To be the equivalent of what they buy in the shape of live hogs.

Q. Then after they manufacture the product, lard or ribs or whatever it may be, where do they sell that stuff, the actual commodity? A. Mostly south.

Q. South where?

A. South in the United States and the southern states.

Q. Any other place? A. Ship lots of it abroad.

Q. Then after they have sold the actual commodity that they have on hand, what do they do with the stuff that they have sold as a hedge on the Board of Trade?

A. They would have to buy that in.

Q. Well, what do they do with the two deals where they had sold on the hedge and bought in?

A. If the stuff is not delivered it is rung up.

Q. As a rule which way is it done, rung up or delivered?

A. Mostly rung up.

Q. What proportion is rung up and what proportion delivered, of hedging deals?

Mr. Robbins: I object to that unless it is confined to Armour.

Mr. Jenks: Confine it to Armour & Company.

583 Mr. Robbins: During the time he was connected with Armour & Company.

A. It is a very small percentage, the actual delivery is a very small percentage of the whole.

Q. How much would you say?

A. I don't think over five per cent.

Q. As a matter of fact, Armour & Company are handlers of the actual commodity very extensively, are they not?

A. Yes sir.

Q. And the transactions on the Board of Trade that Armour & Company had, were usually hedging transactions, were they not? A. Yes sir, they were.

Q. In the hedging transactions they were usually rung up any

without delivery except by merely paying or receiving the difference in the market price? A. Yes sir.

Q. That is correct? A. That is correct.

Q. Do you know what firms in Chicago pretend to handle cash commodities? A. There are a few.

Q. Do you know how many members of the Board of Trade there are doing business there dealing practically every day?

A. I should imagine about 400.

Q. In that number, how many, if you know, are dealing in the actual commodity and how many are merely speculating in futures?

Mr. Robbins: I object to that. That is not proper, not a proper way to put a question on direct examination.

Mr. Jenks: Do you know?

Mr. Robbins: I object on the ground that the witness isn't qualified to express an opinion on that subject. This witness as I understand, hasn't been a member of the Board of Trade for five years, and when he was a member he was working for Armour & Company and McReynolds, and to allow him without any more foundation to give an opinion, not only of their business, but of the business of other members, 400 other members, is pretty far fetched.

The Master: You apply that to the present time, Mr. Jenks, I think the objection is good.

Mr. Jenks: When you were there?

584 Mr. Robbins: When was that, Mr. Witness, when was it? A. Two years ago.

Mr. Robbins: As a member? A. Five years ago.

Mr. Robbins: I mean when did you cease to be on the floor of the Exchange? A. Five years ago.

Mr. Robbins: Five years ago. He hasn't been upon the floor for five years, and he hasn't shown that he knew anything since.
The Master: I have—
Mr. Jenks: I will show by other people.
The Master: He may confine the question to the time the witness was on the Board.

Mr. Jenks: While you were on the Board or connected with a Board of Trade house?

Mr. Robbins: Objected to on the ground he hasn't been qualified to express an opinion.

(Question read.)

Mr. Jenks: Four hundred dealing there every day.
The Master: He didn't say that there was four hundred.

A. I thought he asked how many members were up there transacting business.
The Master: While you were there?
A. About four or five hundred all told.

Mr. Jenks: How many were dealing in actual commodities and how many were speculating in futures?

Mr. Robbins: Same objection.

The Master: I caution the witness to testify to his own knowledge and not to guess.

A. Why there must be 100 men actually engaged in the cash business up there every day.
Q. Do they do any cash business in the pit? A. No sir.
Q. It is at the pit that I am talking about, there in the pits?
A. They don't do any cash business in the pits, no sir, they don't do any actual cash business in the pit.
585 Q. Pits are what I am talking about. What proportion of those people there are dealing in actual commodities and what proportion are dealing in futures?

Mr. Robbins: If you know.

A. They are all in the speculative or future business at the pits.
Mr. Jenks: How many men, as a rule, members of the Board of Trade, are engaged practically every day at the pit?
A. Four or five hundred.

Q. Among that class of men that deal there at the pits, do you know how many of them there are that close up their deals every night? A. No, I don't know. Quite a number.

Q. Quite a number. Those who close up their deals every night, how do they do it? While at the pits they are buying something for future delivery all the time?

A. They buy and sell the same amount each day.

Q. Then what do they do to get out of the trade?

A. Settle up.

Mr. Robbins: I want to object to that. Here is a witness who says there is quite a number there. It isn't shown that he really knows one of them who buy and sell the same quantity every day, but he is asked how they settle their trades. How can an honest, intelligent witness undertake to say that?

Mr. Jenks: You will find out if you will let me go ahead.

Mr. Robbins: I don't think you are entitled to ask of this witness, not on cross-examination; the rule is, you must lay the foundation.

The Master: I caution the witness again to state only of his own knowledge.

Mr. Robbins: This he cannot know of his own knowledge.

The Master: He is the judge of that.

Mr. Robbins: This is a question that calls for an opinion and it is not something that he can know of his own knowledge; it is a question purely for the witness' opinion.

586 The Master: I don't look at it that way exactly. He may answer. (Question read.)

A. In course of time the stuff is either delivered or settled by rings.

Mr. Jenks: These men who are up there and who buy and sell the same day, and close up their transactions, how do they close it up? What proportion of those transactions are rung up, and what proportion settled by delivery?

Mr. Robbins: Objected to.

The Master: I think that is guess work.

Mr. Jenks: Now let us go back to those questions that were objected to while the Master was away. Well, pass that.

Q. Do you know anything about scalping business up on the Board? What does scalping business mean?

A. Why it is supposed to be a man, as near as I can figure it

out, who pretends to buy things on small margins, that is, trying to get the fluctuations of the market.

Q. Settle on differences in market prices? A. Yes, sir.

Q. Now, where is that business done on the Board of Trade?

[Q.] Which business do you mean?

Q. Scalping business? A. In the pits.
Q. Have you any idea of the extent of that business?
A. No sir.
Q. Is the scalper as a rule a member of the Board or not?
A. Yes sir.
Q. Now, how many of the men dealing up there that you know about are scalpers? A. I couldn't tell.
Q. Large number? A. Quite a number.
Q. Can you tell whether their deals at the pits are reported in the market reports? A. Surely.
Q. Now how do those scalpers settle up their deals?
A. Buy—

Mr. Robbins: That is the same question, the same guess work.

Mr. Jenks: Is it guess work, or do you know how the
587 scalpers settle up their deal?

A. Settle them the same as anybody else, I know that.
Q. How? A. By ringing them up.
Q. Well, there are a lot of scalpers there who haven't any money, aren't there?
A. No, I don't say that, they must have a little.
Q. Aren't there a lot of men there, scalpers, who haven't money enough to take in a 10,000 bushel lot of wheat?

Mr. Robbins: I object to that.

A. I don't know that.
Mr. Jenks: Do you know—

Mr. Robbins: Do you waive that question?

Mr. Jenks: (continuing)—where the scalpers make trades there at the pit?

Mr. Robbins: We are going to have this question and answer go out?
Mr. Jenks: What is it? (Question and answer read.)
Mr. Robbins: I want the question to go out.

Mr. Jenks: I withdraw the question and strike out the answer. Where the scalpers make deals at the pits, do you say that it is reported and sent out as the market report, is that sent out the same as any other market report? A. Yes, sir.
Q. And constitutes a part of the market prices that are sent out continuously from day to day from the Board of Trade?
A. Yes sir.
Q. Do you know of any other people than Armour & Company who deal in the actual commodity? A. Yes sir.
Q. Who? A. Quite a number.

Q. Do you know whether those people carry the actual commodity and make hedging deals on the Board of Trade?
A. Well, I am positive in my own mind they do but—
Q. Well, if you are not sure—

Mr. Robbins: But what?
A. I never did any business for them.
Mr. Robbins: Don't know anything about it?

588 Mr. Jenks: You know that the same as you know a great many other things that you haven't any personal knowledge of?

Mr. Robbins: Let him answer. But what? You don't know?
Mr. Jenks: That is what he said.
A. That is what I said.
Q. Will you state, Mr. Watson, the course of practice of a commission house dealing on the Board of Trade in Chicago?

Mr. Robbins: The same objection. It is not right for him to state the course of business of a house he has not been connected with. (Question read.)
Mr. Robbins: No foundation—
The Master: I don't understand the question.

Mr. Jenks: Strike the question out. If Mr. Robbins keeps still until I put it, we will understand what we are about. What is and has been the course of practice of a commission house with which you, were familiar in dealing on the Board of Trade where they are dealing for outside customers, and the deal with the customer is closed out, if it has been a purchase, is closed out by sale and ended so far as the customer is concerned, what is the practice of that commission house as to ringing up that deal on the Board of Trade?

Mr. Robbins: Wait a minute, I object to that. It assumed that this witness is familiar with a commission house and he hasn't stated that, but on the contrary stated that he wasn't.
The Master: No I didn't understand him to say that. He may answer. You may ask as to what commission house. I understand he has said—

A. I will say that I am familiar with ringing up trades. I was a settling clerk at one time.

Mr. Jenks: I mean a commission house. Read the question.
The Master: You needn't read that question. I will ask a preliminary question. Are you familiar with the course of dealing of any commission houses of the Board of Trade?
589 A. Yes sir.
The Master: Now answer the question. (Question read.)

A. Why if the settling clerk—if he can possibly make a ring, he certainly makes a ring.

Mr. Jenks: And if the ring is made, then what becomes of the deal on the Board?

Mr. Robbins: Let the witness finish his answer.

A. It is wound up.

Q. And it is wound up on the Board of Trade by doing what?

A. By payment or receiving a check for the difference.

Q. The difference between what?

A. Between the purchase and the sale.

Q. Now does it make any difference as to their ringing up that deal, whether they close out the transaction with their customer or not? A. No.

Q. They ring up the deal whenever they can on the Board of Trade? A. Yes sir.

Q. If they are able to, they ring it up before it is settled with their customer, and if they are not able to they ring it up after it is settled with the customer? A. Yes sir.

Whereupon, at 12:45 an adjournment was taken to meet at two o'clock November 29th, 1901.

Two o'clock P. M., November 29th, 1901, parties met pursuant to adjournment. John S. Watson resumed the stand, being examined by Mr. Jenks, testified as follows:

Q. Where these rings are made and the deal settled up by any deliveries, are the quotations in the pit resulting from these deals sent out and do they constitute a part of the market quotations? A. Yes sir.

Q. You dealt for yourself on the Board? A. Yes sir.

Q. What kind of business were you doing there?

A. Brokerage business and provisions more especially than anything else.

590 Q. On your own account were the purchases and sales made for future delivery? A. Yes sir.

Q. How extensive were your dealings in that way on the floor of the exchange room of the Board of Trade?

A. On my own account?

Q. Yes? A. I was pretty busy all the time.

Q. Can you give any idea?

Mr. Robbins: He means your individual sales as taken from your brokerage business.

Mr. Jenks: Just one moment. Mr. Robbins, if you wait I will put a question so that the witness will understand it. In these transactions there for commodities for future delivery were these deals made at the pits or at some other place?

A. In the pits.

Q. How extensive were your own dealings at the pits, per day, week, or month?

A. Why, they varied. Some days I have traded as high as twenty thousand bbls. of pork, other days probably not five hundred.

Q. And for how long a time did you continue that?

A. Three or four years.

Q. During that time, what proportion of the deals that you had resulted in an actual delivery and payment for the commodity dealt in? A. I didn't pay for any.

Q. Then you had nothing delivered to you?

A. Not personally, no sir.

Q. State whether you delivered anything to anybody else?

A. I did not.

Q. Did you deal in grain there? A. No, very light.

Q. About this scalping business, will you state whether there are a class of people having deals at pits on the floor of the exchange room of the Board of Trade of Chicago that are known as scalpers? A. Yes sir.

Q. Will you give an illustration of what is meant by scalping there on the floor of the exchange room?

A. Yes sir. A scalper is a [men] who tries to take advantage of the fluctuations of the market. He looks for an eighth of a cent, or a small profit. If he can get that he takes
591 it or he takes a small loss. He is in and out of the market. He isn't a man who will make a trade and sit on it for a week or two or five or six months possibly.

gets

Q. He goes in and out in what way?

A. By buying and selling.

Q. How does he get out? How does he close out?

A. Why, if he has it already bid and doesn't like it or wants to get out, he will either bid on the market at a certain price, or he will accept a bid of some other member and sell it to them.

Q. Then how does he get out of it himself?

A. He gets the money out of the clearing house or pays the clearing house, as the case may be.

Q. He gets that by ringing up the deals? A. Yes sir.

Q. And what amount does he pay or receive through the clearing house?

A. The difference between the purchase price and the price it was sold at.

Q. In those transactions the transaction of the scalper, are there ever any deliveries of the commodity? A. Oh, yes.

Q. What proportion of those scalping transactions result in a delivery and what proportion result in a ringing up of the deals?

Mr. Robbins: Objection to that; the same objection that the court sustained.

Mr. Jenks: Add to that question "Do you know?"

Mr. Robbins: Same objection. (Question read.)

The Master: As to the present time. I think we went over that this morning, that he was off of the Board of Trade for some years.

Mr. Jenks: I mean during the time that you were there?

Mr. Robbins: My objection isn't to that; my objection is to the fact that he calls for an opinion of this witness as to what proportion of trade is of other people called scalpers.

The Master: Oh, he may answer if he knows.

Mr. Robbins: That is the same class of question that you stated this morning was a mere guess.

The Master: It is a sort of guess, but if he wants to
592 state it he can. It would be no actual means of knowledge.

A. I don't know.

The Master: He doesn't know. I think that settles that.

Cross-Examination

By Mr. Robbins:

Q. Mr. Watson, there are, are there not, rules prescribed by the Board of Trade in reference to this clearing house—

A. Yes sir.

Q. And settlement by off-set or what you call ringing?

Mr. Jenks: I object to the question because it is not proper cross-examination. (Question read.)

Mr. Jenks: I object to that because it is not a proper cross-examination of anything that was brought out on the direct. For instance, it is asking the witness whether there are rules of the Board of Trade. I asked the witness nothing about the rules. I asked him only as to the members there, and I want to make this objection and I want to make the same objection to every question that is not on the line of what was brought out in the direct examination.

The Master: I consider that proper cross. I ruled on that this morning. Your testimony is that if there are rules there they are disregarded, and his testimony is to show that there are rules.

Mr. Jenks: It is not on the line of the direct examination, and if there are rules of the Board, the rules themselves, which are printed, are better evidence than to prove what the rules are by some witness.

The Master: He isn't going to prove what they are.

Mr. Jenks: We will have an understanding that all questions are objected to that are on a line not followed out by the direct examination.

Mr. Robbins: Let that be a general objection.

The Master: Yes. That question may be answered.

A. There are rules, yes sir.

Mr. Robbins: It doesn't follow, does it, that because
593 the customer of a— A. I beg pardon, I didn't hear.

Q. It doesn't follow, does it, that because a customer of a commission house, doing a commission business, has bought and sold, and received his profit, or adjusted his loss, as between himself and his broker, that the trade that the broker has made upon the floor of the exchange has been closed, does it?

A. I don't quite understand you now.

(Question read.)

A. No, not necessarily.

Q. That would have to remain as an open trade on the floor until parties could be found having other trades who could join with the ring? A. Yes sir, but—

Q. There would be a delivery. In case the trade couldn't be closed by a ring, delivery would be made under the course of business over there? A. Yes sir.

Q. And would have to be made under the rules of the Board of Trade? A. Yes sir.

Q. These rings, can any parties become parties to the rings who haven't both bought and sold? A. No sir.

Q. A man has to both buy and sell before he is in a position to join in a ring? A. He must of necessity do so.

Q. And he isn't obliged to join in a ring unless he wishes to do so? A. No sir.

Q. It depends on the consent of both parties? A. Yes sir.

Q. This ring that you speak of, is nothing more or less, is it, than parties after having made an original trade getting together and closing up the trade because—in cases where a counter trade has first been made? A. That is what it is.

Q. If there was no ring made, what would result?

A. There would have to be delivery.

Q. Have to be a delivery? A. Yes sir.

Q. So that, if a man had both bought and sold he would deliver the property out and he would also receive the same property? A. Yes sir.

594 Q. At the same time practically? What?

A. Yes sir.

Q. And in case of several parties joining in a ring, all of them, as you have said, would have sold and bought, both?

A. Yes sir.

Q. And if instead of adjusting by this ringing or off-setting system, that was eliminated, and those trades were closed, what would be the result? A. It would result in a delivery.

Q. Well, wouldn't this result that the first man who delivered the property would ultimately receive the property back again? A. Yes sir.

Q. So that he would be just where he started, and all the trades would be closed up by actual delivery? A. Yes, sir.

Q. Now in the case of these scalpers, that come in there and buy and sell quickly, suppose their trades—suppose they then can't find persons who are willing to join them in a ring, what follows? A. Delivery.

Q. Delivery to them or by them, as the case may be?

A. Both, yes sir.

Q. At the time of delivery of the contract? A. Yes sir.

Q. And is there any way of avoiding that in case it is not rung up? A. No sir.

Q. Delivery even in scalping transactions is bound to come?

A. Unless settled otherwise.

Q. Unless the parties consent to adjust by ringing before the time of delivery arrives? A. Yes sir.

Q. That is the regular practice down there? A. Yes sir.

Q. Regular course of business? A. Yes sir.

Q. How can you tell standing there in the pit and watching these trades, whether a trade is what you call a scalp, or whether it isn't, by what takes place?

A. I don't think you could tell.

Q. They are all made in the same way by offers to buy and acceptances by the other party? A. Yes sir.

Q. They are all noted on cards in the same way, and
595 the whole course of business at the time is the same?

A. Yes sir.

Q. Whether they are scalps, or whether the party who sells intends to deliver the property he is actually selling?

A. Just the same.

Q. Could an officer of the Board of Trade, standing in the pit there, and watching the transaction there, distinguish between the trades that were scalped and the trades that were not? A. No sir, he couldn't no.

Q. Well, at the time that these trades are made, is there anything—any way of telling or treating those that will be subsequently rung up, and those that will subsequently result in being completed by deliveries? A. No sir.

Q. Could any officer of the Board of Trade, or any member of the Board of Trade stand there and watch the pit and tell what are to be settled by off-set or ringing, and what are to be completed by actual delivery? A. No sir, nobody could tell.

Q. All made the same way? A. Exactly in the same way.
Q. You said that for Armour you only appeared in the provision pit, I think you said? A. Yes sir.
Q. Armour & Company, through you, sold the actual stuff in the provision pit, did they not?
A. We sold a future option there, or sometimes we delivered the actual stuff later on.
Q. Didn't they sell cash property through you?
A. A little, yes.
Q. Who else connected with Armour had to do with the selling of cash property?
A. Mr. Favorite was the only one that was up there besides myself.
Q. He had to do with the selling of the cash property and you of the futures? A. Well, both.
Q. What? A. Both of us worked at the same thing.
Q. And in the provision pit? A. Yes sir.
Q. Cash property is sold in the provision pit?
A. Not in the pit, no.
What? [—]. Outside the pit.
596 Q. Isn't sell the month, made there?

Mr. Jenks: That isn't a cash sale anyway.

A. Very little.

Mr. Jenks: That isn't a cash sale.

Mr. Robbins: If you wished to sell for Armour & Company to deliver during the current month, where would you make the sale? A. Well, I could offer it in the pit.
Q. You could make the trade in the pit?
A. Yes sir, provided—
Q. There are people who do make trades of that kind in the pit? A. Yes sir; at times, yes sir; very small though.
Q. What would be the difference in case of Armour wishing to sell properly that he had on hand between selling the cash stuff and selling, sell the month? A. You mean in price?
Q. I mean the practical difference in the transaction, what difference is there? Is there any difference?
A. I can't see that there is much difference.
Q. In such a transaction the cash price and the sell the month price are the same?
A. Would be the same, yes. At times I have seen the cash stuff at a premium.
Q. As a rule, seller the month and cash are the same as to price? A. Yes sir.
Q. And practically the same in every respect, are they not?
A. Yes sir.

Q. From the standpoint of the party who has the property to sell? A. Yes sir.

Q. Armour & Company while you were connected with them, did sell for future delivery in the provision pit and subsequently deliver the property on those contracts? A. Yes sir.

Q. Did they quite frequently do that?

A. Quite frequently, yes.

Q. Deliveries pretty large out there of provisions?

A. Yes sir.

Q. On these future contracts? A. Yes sir.

Q. Now was there any way of delivering at the time you made any of these future contracts with Armour & Com-

597 pany, Armour & Company would deliver or close them would close by taking in the hedge?

A. No sir, no way I could tell.

Q. Is there any way by which any member of the Board or the Board of Trade itself, could tell such as would be filled by actual deliveries and those that would be filled by selling of

out the hedge? A. No sir.

Q. They were all made by the same general form of—of phraseology in offering and accepting? A. Yes sir.

Q. Armour & Company are very large packers here?

A. Yes sir.

Q. And deliver very large quantities of hog products upon [hog products upon] contracts made by them for future delivery by the Board of Trade?

A. No, they don't deliver large quantities.

Q. They don't deliver large quantities?

A. Not on the Board no sir.

Q. What did you have to do with the deliveries of Armour & Company? A. I had the whole thing to do.

Q. The deliveries? A. Yes sir.

Q. You had charge of the delivery department?

A. Yes sir; they got the warehouse receipts and everything else whenever we did issue any such thing. I had charge of making out warehouse receipts and so forth.

Q. How many warehouses did Armour & Company have for the storage of provisions? A. I couldn't tell you.

Q. What other concerns are there in Chicago engaged in the packing business besides Armour & Company?

A. There are a dozen of them.

Q. Concerns engaged in a large way in packing?

A. Yes sir.

Q. Hogs? A. Yes sir.

Q. Do they have representatives in the provision pit there?

A. Oh, yes sir.

Q. Offering to buy and sell property in the same way?

A. Yes sir.

Q. In these hedging sales you confine your knowledge to the provision pit, do you? A. Yes sir.

598 Q. You had nothing to do with the hedging by Mr. Armour of grain? A. None whatever.

Q. Mr. Armour [was] also a large elevator—stored grain in large quantities? A. Yes sir.

Q. And had men on the floor to make contracts for him in that branch of his business, and in the same way that he had you in the provisions? A. Yes sir.

Q. Do you know whether Armour & Company hedged grain as well as their provisions on the floor of the Board of Trade?

A. I think he did. I know they did, in fact.

Q. Didn't Mr. Armour sometimes through you buy property from the other provision men? A. Yes sir.

Q. For what purposes, for shipping out in trade?

A. As a general rule he bought it to off-set some sales that he had sold against his packing houses as a hedge originally.

Q. Didn't he also buy from the other provision men in the pit and ship out, take the property? A. Yes sir.

Q. You did know then, of deliveries to Armour & Company by the other packers? A. Yes sir.

Q. On these contracts for future sales? A. Yes sir.

Q. On these same contracts that you say were made in the provision pit? A. Yes sir.

Q. These same contracts that resulted in these quotations?

A. Yes sir.

Q. To what extent did Armour & Company buy property in that way? A. I couldn't tell you.

Q. To a large extent?

A. During the course of a year it amounted to a whole lot.

Q. How much do you think?

A. I haven't got the slightest idea.

Q. I am speaking now of cases where he bought and took the property from other packers?

A. I couldn't begin to make a guess at it.

Q. He would do that in a large way, would he?

A. At times.

599 Q. You make the trades for him in the wheat pit and in the provision pit? A. Yes sir.

Q. Go in there and buy for a future month? A. Yes sir.

Q. And report the same to him? A. Yes sir.

Q. Or the purchase to him, and then when the month came around the other packers would deliver the provisions to him on this future contract?

A. If they wished to it was his privilege.

Q. And he would pay for them and take receipts for them?

A. I have known him to do that, yes.

Q. And on future sales, fill purchases, contracts for future delivery? A. Yes sir.

Q. At the time Armour & Company, or these people make these hedges they don't know whether they will deliver the property or not, do they? A. They don't know.

Q. The question whether they will deliver it or whether they will take in the hedge depends on the conditions existing at the time they want to take in the hedge isn't it? A. Yes sir.

Q. If it is more profitable to deliver the property than to make a trade in the open market to close it, they deliver?

A. Provided they have it. They may not have the stuff at all even if they do have the hogs. It is a hedge against something else.

Q. Armour & Company always have lots of stuff?

A. Not the stuff that is sold in the pit.

Q. Don't they have lots of things?

any

A. They don't make mess pork or any ribs. They make lard and still they sell pork products against their packing houses.

Q. And they do make, do they not, those products? A. No.

Q. They don't make the products at all? A. No sir.

Q. They buy the products from others, do they?

A. If they need them.

Q. In their business?

A. If they buy them they buy from some one else.

Q. Even in the case of these hedges, a delivery may be required of the goods, the pork, may it not? A. Yes sir.

600 Q. It doesn't follow because Armour & Company goes in and makes a sale to protect themselves by way of hedge and then want to close the transaction that—by a counter purchase, that they won't have to deliver upon the contract? A. Oh, he will have to deliver.

Q. It is only in case he can't effect a settlement by off-set that he escapes it even in that case? A. Yes sir.

Q. So that every hedge requires a delivery unless by agreement with the parties and by—through the means of this ring ing? A. Settlement, yes.

Q. Settlement can be effected in no other way?

A. Yes sir.

Q. And at the time of the original contract there is no way of knowing— A. Absolutely none.

Q. (Continuing)—whether delivery is going to be made or whether such an adjustment can be effected, is that right?

A. That is correct.

Q. You spoke of confirmation slips which were exchanged between members of the clearing house and sent to the business offices? A. Yes sir.

Q. See if this is a form of the slip that you spoke of?
A. Yes sir.

Mr. Jenks: Let us see. I would like to have this identified in the record.

Mr. Robbins: I am going to ask to have it copied right into the record.

Mr. Jenks: Let them copy it now. I will read on one side of it "Chicago". We hereby confirm purchase made by us today under the rules of the Chicago Board of Trade as follows: of

Then there are five spaces below in the heading and the first one at the left is "Account". The next one—

Mr. Robbins: I suggest that you let them take that and they will copy without explanation. Let them copy it in, both sides.

The following is a copy of the slip referred to:

601

"Chicago, ... 190....

We hereby confirm purchases made by us today under the rules of the Chicago Board of Trade as follows, of

Amount.	Delivery.	Kind of Property.	Price.
		Per	

And on the back of the slip is as follows:

Chicago, ... 190....

We hereby confirm sales made by us today under the rules of the Chicago Board of Trade as follows, to

Amount.	Delivery.	Kind of Property.	Price.

Per .....

Q. The purpose of those slips is to guard against errors in those trades as they are made in the wheat pit? A. Yes.

Q. In order to prevent misunderstanding as to terms?
A. Yes sir.
Q. Now at the time a trade is made a settlement is also arranged is it not, by the commission man and the customer?
A. Yes sir.
Q. See if those two forms are the forms in use on the Board of Trade for that kind of settlements? A. Yes sir.

Mr. Robbins: I would like to get those two copied in.

The following is a copy of the form referred to:

Chicago, ... 1901.

.....

.....

E. & O. E. We have this day BOUGHT for your account:

602 "All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Board of Trade of the City of Chicago, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto."

Quantity.	Delivery.	Article	Price.	Of whom bought.

Chicago, ... 1901.

.....

.....

E. & O. E. We have this day SOLD for your account:

"All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Board of Trade of the City of Chicago, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto."

Quantity.	Delivery.	Article.	Price.	To whom sold.

Q. You worked for McReynolds? A. Yes sir.
Q. McReynolds, was he a large dealer in cash property at the time you were working for him? A. Yes sir.
Q. Had elevators? A. Yes sir.
Q. Had corn cribs in the country? A. Yes sir.
Q. Large shipper of grain for export?
A. I guess so, but I don't know.
Q. Handled large amounts of actual grain?
A. Well, I didn't have anything to do with that.
Q. Well, don't you know that they did that?
603 A. I think so; I think they did, yes sir.
Q. Were they hedgers too? A. Yes sir.
Q. Did they hedge their wheat in the wheat pit?
A. Yes sir.
Q. By means of future sale? A. Yes sir.
Q. And their oats in the oat pit? A. Yes sir.
Q. And their corn in the corn pit? A. Yes sir.
Q. When they would buy in the west grain of any kind, they would sell for future delivery against that on the Chicago Board of Trade? A. Yes sir.
Q. And when the grain came to Chicago, they would put it in their elevators and either delivered out the grain on those sales or buy it in and ship it elsewhere? A. Yes sir.
Q. At the time they made those hedges they had the actual property that they sold against? A. Yes sir.
Q. And at the time they made the trade they didn't know then whether they would deliver or whether they would divert the grain to some other corner and take the hedge in?
A. I don't suppose they did.
Q. There was no way in those hedge trades of anybody in the wheat pit knowing what would be the ultimate end of the transactions that were made of this character? A. No sir.
Q. They were not made in such a way that anybody standing there watching the wheat pit could tell whether McReynolds & Company intended to deliver that grain that came to Chicago, or whether they intended to take in the hedge and ship the grain out further?
A. Couldn't tell anything about it.
Q. No way of distinguishing this transaction from any other transaction for future delivery made in these pits?
A. No sir.
Q. Now when McReynolds & Company sell grain in the east or for export, don't they also hedge there by buying against other sales? A. Why surely.
Q. What? A. Yes.
Q. That was by way of protection? A. Yes sir.
Q. And at the time they did this, they had a number
604 of quantities covered by these transactions?
A. Yes sir.

Q. What? A. Yes sir.

(The last few questions and answers read.)

Mr. Jenks: That is, after they sold it they had it.

Mr. Robbins: After they sold it for future delivery they sold it out.

Mr. Jenks: All right, if the witness still understands it.

Mr. Robbins: Their sales for futures in cases last supposed would be sales for delivery in the future, would they not?

A. Yes sir.

Q. Now in these hedging transactions of McReynolds, was there any way of—in the wheat pit, of distinguishing those in which deliveries actually followed from those in which McReynolds found it advantageous not to make actual deliveries?

A. No sir, I don't think there is any way.

Q. Is there any way of distinguishing the quotations made on one of this class of transactions and quotations made in the other? A. No sir.

Q. Aren't you putting it pretty low when you say there are only one hundred dealers in cash property on the Board of Trade? A. Well, I don't think so.

Q. Aren't there nearer five hundred when you take all of the properties dealt in, hay and flour?

A. I don't think there is any five hundred or anything like it.

Q. How many tables are there, small tables, aren't there fifty? A. I don't think so.

Q. You never traded in the wheat pits yourself?

A. Very little, I have a little.

Q. The distinction between the wheat pit and the small table portion of the Board of Trade, is that in one they deal in round lots and in the other in car lots, isn't that the difference?

A. Yes sir.

Q. And the transactions for the present delivery of round lots of wheat would be made in the wheat pit? A. Yes sir.

Q. And the transactions for the present delivery of
605 car lots would be made around the sample table?

A. Correct.

Q. That is the distinction? A. Yes sir.

Q. And the only distinction?

A. Yes sir, as far as I know.

Q. What is the last firm you worked for? A. McReynolds.

Q. When did you leave Armour? A. In '93.

Q. You were receiving a large salary from Armour, were you not? A. Nothing very large about it.

Q. You occupied quite a prominent position with Armour & Company at the time you were with them? A. Why, yes.

Q. And how long did you say it was since you worked for McReynolds & Company? A. A little less than two years.

Q. What have you been doing since then?

A. I have not been doing much of anything, trying to sell rope lately.

Q. Rope? A. Twine, bags and paper.

Q. This Stag Hotel that you referred to, where is that located? A. Right over here in VanBuren Street.

Q. That is one of those lodging houses where you can get beds for about ten cents a night, is it not?

A. It is no such thing.

Q. It is a lodging house, isn't it?

A. Well, I don't know what you call a lodging house. You can get lodging there.

Q. What are their rates? A. Twenty-five cents up a night.

Q. Twenty-five cents a bed? A. Yes sir.

Redirect Examination

By Mr. Jenks:

Q. Mr. Watson, just a few simple questions. Mr. Robbins asked you whether the only difference in the deals at the pits and those at the table was that at the pits they dealt in large quantities or in bulk, and at the tables they dealt in car load lots? A. Yes sir.

Q. You answered yes? A. Well the difference—

Q. Isn't it a fact that at the tables they deal in commodities for cash and immediate delivery? A. Yes sir.

Q. While at the pit they deal in commodities for future delivery? A. Only.

606 Q. What is the difference, if you know between trading in cash property and trading in property for future delivery or trading in options?

Mr. Robbins: Wait a minute. (Question read.)

A. A cash transaction is where you receive and deliver the warehouse receipt for which you receive and pay the money.

Q. At once?

A. At once, yes sir. An option on future delivery is the seller's option during some future month.

Q. That is, receive and pay for it and ring up and settle on differences, as the case may be? A. Yes sir.

Q. Mr. Robbins in his wisdom, asked you if where a perfect ring was made in future transactions, one of those parties might refuse to ring up and stand on his contract, and require delivery of the commodity and you answered that you thought he could refuse to ring up?

A. He certainly could refuse to ring up if he wished to.

Q. Now let us suppose that there is a complete ring where a sale of the commodity has been made for future delivery; say for instance that sale was made by Mr. Robbins to Mr. Shea, by Mr. Shea to me, by me to Mr. Harkless, by Mr. Harkless to Mr. Christie, by Mr. Christie to Mr. Hill, by Mr. Hill to Mr. Robbins, the same commodity for the same delivery and the same amount but the prices were different Now in answering the other question, you said that either one of us might refuse to ring up that deal? A. Yes sir.

Q. Although that is a perfect ring, is it not? A. Yes sir.

Q. Now we will suppose that some one of us did refuse to ring up, and the day of delivery came, in what manner, on the were and

Board of Trade, are deliveries made?

A. On the floor of the exchange.

Q. I asked in what manner?

A. By delivery notice, what we call a delivery notice.

Mr. Robbins: I object to that.

Mr. Jenks: The delivery notice would start, say, with Mr. Robbins, and he would give that notice to Mr. Shea, Mr. Shea would pass it to me, I would pass it to Mr. Harkless, Mr.
607 Harkless would pass it to Mr. Christie, Mr. Christie would pass that notice to Mr. Hill, and Mr. Hill would pass it to Mr. Robbins, so it would end right where it started. Now that is [is] a mere notice that somebody—it is a mere notice given by Mr. Robbins that he holds the warehouse receipt on some warehouse? A. Yes sir.

Q. Will you tell me who pays for that property on that kind of a delivery?

A. In a case of that kind, nobody pays for it.

Q. Who delivers it?

A. Mr. Robbins sends around this notice but it wasn't delivered at all.

Q. Wasn't delivered at all. Now isn't that the case—isn't that the fact in every case where there is a perfect ring, which might be rung up on the Board of Trade before delivery?

A. Yes sir.

Q. Now as in the example that I gave you, where the sale starts with Mr. Robbins, and the purchase ends with him, isn't the delivery on the Board of Trade made in just that way, by delivering a notice that somebody holds the warehouse receipt?

A. Yes sir.

Q. And isn't that called a delivery on the Board of Trade?

A. That is called a delivery, yes.

Q. Mr. Robbins asked you about Armour & Company having the actual commodity and the making hedged deals or sales on the Board of Trade against that commodity, and he

asked you if anybody could tell whether they intended to deliver the stuff when they made the hedged sale. You answered no. What was the custom of Armour & Company as to delivering property on hedged sales? Was it usual for them to make deliveries on hedged sales, or was it usual for them to ring up the deals?

A. Usual for them to ring it up, ring up the deals, more so than to deliver.

Q. Mr. Robbins put to you a question as to McReynolds & Company I think it was, that he said dealt in the actual stuff, and he put the question to you as to whether or not if they had the actual commodity on hand and they made a hedged sale, on the Board of Trade, and afterward they shipped the property east and sold it there, he asked you whether
608 they had the property to deliver on this hedged sale. I understood you to say yes?

A. I didn't understand the question that way.

Q. Now if the question was put that way, if they had the actual property on hand, they made a hedged sale on the Board of Trade afterward they shipped the property east and sold it there then without having the property here to deliver on the hedged sale— A. No, they would have to buy it here.

Q. Then when they buy it in here, what was the usual custom as to whether they would receive the stuff that they bid in or whether they would ring up the deal?

A. Ring it up if possible, and if not, take it up and send it out again.

Q. Now again, on the Board of Trade a man, being a member, makes a sale to some other member of the Board on the floor, say, of May wheat. Afterward he buys the same quantity of the same commodity for the same delivery and buys it of the same man? A. Yes sir.

Q. What is the usual order of such deals as to whether the commodity was delivered or whether they merely scratched the transaction and paid the difference to each other between the market price?

A. That is what they do. That is what they call a direct settlement.

Q. Now are direct settlements on the Board of Trade in transactions that the members have there with each other few or numerous? A. Quite numerous.

Q. And wherever there are direct settlements there are no deliveries at all, are there? A. No sir.

Q. No pretense of any delivery? A. No sir.

Q. Now in answer to Mr. Robbins, you also said that Armour & Company, when they had on hand a lot of hogs, would hedge against their purchase of the hogs or against the hogs themselves on the Board of Trade, by selling a quantity

of ribs or short ribs, or something else, mess pork, and you also said that Armour & Company did not manufacture out of the hogs ribs and mess pork. Now I will ask you whether if Armour and Company sold mess pork, ribs and lard
609 on the Board of Trade as a hedge against the hog product that they had on hand, was it a usual thing for them to deliver the mess pork and lard under that contract made on the Board, or was it their usual custom to ring up the deals? A. Their usual custom was to ring it up.

Q. In answer to Mr. Robbins, you said that all trades closed by actual delivery, and the first one delivering would still have the property if there was a complete ring. Now in the case that Mr. Robbins put to you which he called an actual delivery, is the case that I put to you one identical with that, and isn't it a fact that there is no delivery at all where the property starts out from one party and comes back to him?

A. Yes sir, the same thing.

(Question and answer read.)

Q. You also told Mr. Robbins that if one would start and watch the transactions at the pits, he couldn't tell whether the parties making those transactions intended a delivery or not? A. He couldn't tell.

you

Q. Wait a minute. I want to ask whether when you are standing there and watching and you saw that I bought from Mr. Harkless, both of us being members of the Board of Trade, ten thousand bushels of December wheat, and in a few minutes I sold to Mr. Harkless ten thousand bushels of December wheat, could you tell in that transaction whether we both intended a delivery?

A. I could tell that you wouldn't probably deliver.

Q. Well, that would be self evident, wouldn't it, that my purchase from and sale to him would be scratched, purchase and sale was merely scratched off the books? A. Yes sir.

Q. Now if those two purchases—

Mr. Robbins: You say they would be scratched off of the books? A. That is what they call a scratch.

Q. Did you say that would be scratched off of the books?

A. No sir, that wouldn't be scratched off.

Q. To be scratched it must be at the same price?

A. Yes sir.

Mr. Robbins: He don't know.

610 Mr. Jenks: Now, Mr. Watson, suppose that transaction was that I bought from Mr. Harkless ten thousand bushels of December wheat at seventy cents, and on the same

day while you were looking on, I sold to Mr. Harkless ten thousand bushels of December wheat at seventy-one cents, I want to know how the respective books would show as to those two transactions?

A. You had it bought at seventy cents, you say?

Q. Yes?

A. You would have bought it of Mr. Harkless for seventy cents, and you would have it entered on the bought side of your option book, while on the sold side, on the sold side of Mr.

your option book also to Harkless at seventy-one cents. The next [say] I would claim to the clearing house the difference between seventy and seventy-one cents on the ten thousand.

Q. And would that end the transaction?

A. As soon as the clearing house paid you that is the end of it.

Q. That is the end of it? A. Yes sir.

Q. There is no delivery made there at all? A. Yes sir.

Q. And we settle on merely the difference in price?

A. Yes sir.

Re-cross Examination

By Mr. Robbins:

Q. Well, now, Mr. Watson, assume that you are a deliverer for me, and I tell you that I have five hundred barrels of pork to deliver at ten o'clock this morning. Just tell me what you would do. I have sold it to Mr. Shea, and Mr. Shea has sold it to Mr. Jenks and Mr. Jenks has sold it to Mr. Harkless and Mr. Harkless has sold it to me?

A. If it is delivered in the morning, you say?

Q. Yes?

A. I would make out a bill to the man I had it sold to.

Q. What then would you do?

Q. I would attach the warehouse receipt—

Mr. Jenks: A bill or a notice?

A. A bill if it was before eleven o'clock. I would make out a bill attaching the receipt and inspection certificate, and I would deliver it to you, whoever I sold it to, I would deliver it, and receive a check.

Q. You would get the check. What would the next man do?

611 A. That would be as far as I could go. I have nothing to do with him. He could do as he pleased.

Q. What would the next man do in the course of business?

A. I suppose he would do the same.

Q. He would deliver it to Mr. Jenks and get his check?

A. Yes sir.

Q. And the next man would do the same? A. Yes sir.

Q. And it would finally be delivered back by Mr. Harkless to me, and I would have to give him a check? A. Yes sir.

Q. There wouldn't be any notice at all in that transaction?

A. Not in the morning delivery, no, sir.

Q. Well, then, this notice takes the place of—facilitates deliveries in the afternoon, is that what you mean?

A. This notice takes the place of the—merely a notice to sell that the man who delivers it has the actual pork in his office.

Q. How long have you been connected with the Board of Trade? A. Twenty years.

Q. Do you remember when members of the Board in the afternoon used to make delivery by sending their boys running at full speed from one office to another with the warehouse receipts and the checks in their hands? A. Yes sir.

Q. There was then a limit to the time of day in which a delivery could be made? A. Yes sir.

Q. As there is now? A. There is now, yes sir.

Q. And each man would take the property, if it was delivered to him, and deliver it out, that is, sent to the next man?

A. Yes sir.

Q. And that would be done by messengers running through the streets with the actual warehouse receipts and checks, isn't that right? A. Yes sir.

Q. Now that resulted in considerable loss—considerable danger of loss of receipts and confusion?

A. Yes sir, there was one or two receipts lost, I think.

Q. This notice arose to guard against that, didn't it, to take the place of that?

612 Mr. [Mr.] Jenks: Answer that, if you know.

A. I really don't know that.

Mr. Robbins: What?

A. I don't know.

Q. Didn't it take the place of it, as a matter of fact? After they adopted that notice, did the other method prevail in the afternoon?

A. Why, the notice takes the place of the old deliveries, after eleven o'clock, after the close of change, but previous to eleven o'clock it is the same old system.

Q. Well, this notice you speak of is a notice that is covered by the rules of the Board of Trade, isn't it? A. Yes sir.

Q. There are rules defining what that notice should contain? A. Yes sir.

Q. And imposing the conditions under which a man can deliver a notice on a trade? A. Yes sir.

Q. Suppose that in the case, supposed by Mr. Jenks, the delivery of notice from one to the other, suppose it develop

before the notice came around what would the last man who got the notice—what would he have to do?

A. He would have to pay for his stuff the man who delivered the notice, give him a certified check.

Q. He would receive a warehouse receipt and give a check?

A. Yes sir.

Q. Mr. Watson, so far as the puts there at the provision pit are concerned, you don't know whether round lots of grain are sold for present delivery in pits or not, do you?

A. I know in a general way, yes.

Q. Don't you know that they are sometimes sold for seller the month or present delivery? [A.]

Mr. Jenks: Don't get caught in that trap, seller the month, a trade that is not a cash transaction.

Mr. Robbins: Don't interrupt the witness.

Mr. Jenks: I am cautioning the witness.

Mr. Robbins: It is apparent that you are. You haven't a right to caution the witness.

613 Mr. Jenks: I don't want you to catch a large fly with a little bit of molasses. (Question read.)

A. Shall I answer that?

Mr. Jenks: Do you understand the question?

A. Yes sir, I understand. Yes, is the answer.

Mr. Jenks: Sell of the month or present delivery, and you say "yes?"

Mr. Robbins: You wouldn't undertake to say how much in quantity there was of that transaction? A. No sir.

Redirect Examination

By Mr. Jenks:

Q. What do you call present delivery?

A. I should call it today.

Q. Now suppose the trade is an option, sell the month?

A. That is at the seller's option during the month.

Q. Is that for present delivery, or sale for delivery at any time during this month for present delivery?

A. Present delivery or seller the month, that is what is meant usually, is it not?

Mr. Robbins: Yes.

Mr. Jenks: No. Answer my question. (Question read.)

Mr. Jenks: I will put it again. Q. Is a transaction on the floor which results in the sale of the commodity during the month a sale for present delivery? A. No sir.

Q. And is a sale for present delivery the same thing as a sale for delivery during the month? A. No sir.

Mr. Jenks: That is all.

Re-cross Examination

By Mr. Robbins:

Q. Isn't it practically the same thing?

A. One is a cash sale and the other is the seller's option during the balance of the month.

Q. Isn't the price the same?

A. The price is the same, yes.

Q. And when a seller, a man has property to sell and wants to sell it and deliver it at once, don't he do it as frequently by making it sell the month as for spot cash? A. Yes sir.

Q. Isn't it practically the same thing from the stand-
614 point of the seller?

A. If he delivers that same day, it is the same thing because it is a cash sale. It is cash as soon as delivery.

Walter C. Hough, a witness called on behalf of the defendant, being duly sworn and examined in chief by Mr. Jenks, testified as follows:

Q. Will you state your full name? A. Walter C. Hough.

Q. Where do you live? A. 6617 Washington Avenue.

Q. In Chicago? A. Yes sir.

Q. What is your business? A. At present, nothing.

Q. How long since you have been in business?

A. Since, well, I say it is nothing. I have been trading on the open Board a little bit, but I really went out of business when I went out of the Board a year ago and sold my membership.

Q. Were you ever a member of the Board of Trade of the City of Chicago? A. Yes sir.

Q. Covering what period of time were you such a member?

A. 1875 to 1900.

Q. How much of the time from 1875 to 1900 did you do business on the Chicago Board of Trade, and how much of the time were you familiar with the manner in which business was done there?

A. I did business all the time on the Board of Trade while I was there.

Q. Did you in that length of time become familiar with the mode of doing business on the Chicago Board of Trade?

A. Yes sir.

Q. Did you all of that time do business for yourself or were you connected with other firms, members of the Board of Trade, acting for them on a salary?

A. I did business for myself and I did business as a broker and I did business for the houses where I was working on a salary.

Q. Were you for yourself doing business there as a commission man? A. Yes sir.

Q. Having outside customers? A. Yes sir.

615 Q. Are you familiar with the manner of doing business on the Chicago Board of Trade being a member thereof who was doing business on commission for outside parties? A. Yes sir.

Q. Will you state the course of conducting a single transaction by a commission man who receives an order from an outside customer, and follow that single transaction clear through until it is terminated, wound up, and closed in the usual manner that such transactions are, and have been on the Chicago Board of Trade?

A. Do you mean as an outside customer or as a broker.

Q. An outside customer?

A. I would receive an order from some one in Cincinnati to buy ten wheat. If it was at the market they would—he wouldn't put any price on it. I would go in the market and buy the wheat provided I had this man's margin. If I didn't have any margin, and I know he was good, I would fill it anyway. I would buy the wheat at the market. I would wire that I bought the wheat at a certain price or a certain option. That would be the deal out, he would send me word to sell that wheat, ten thousand wheat, either naming the price or at the market, and I would sell it out and wire him that I sold the wheat at a certain price. Those two trades would be on my books as bought and sold. In the meantime it would be rung up possibly, through the clearing house, what we call a ring.

Q. How would that ring be arrived at?

A. It takes two or three or four parties to make a ring. If I should have wheat sold to Mr. Hill and he to Mr. Robbins and Mr. Robbins to Mr. Hill, that would make a ring.

Q. Then what would be done?

A. I would make out—the ring would be at the settlement price, and it would go through the clearing house and if I owed a difference, I would pay Mr. Hill, and if Mr. Hill owed me, he would pay me through the clearing house.

Q. And he would be paid the difference in what?

A. The difference between the price bought and sold.

Q. Now what would be done to end the transaction?

A. I would collect through the clearing house.

616 Q. And would that end the whole transaction?

A. Yes sir.

Q. As a usual thing in trades on the Chicago Board of Trade how are they closed up?

Mr. Robbins: I object to that as a mere guess, that is, of the business of all the members.

Mr. Jenks: Certainly, usually.

The Master: I think you can show a custom on the Board of Trade by any one that trades.

Mr. Jenks: Yes.

Mr. Robbins: He hasn't qualified himself to show a custom.

The Master: He hasn't qualified himself yet.

Mr. Jenks: As a usual thing, the usual way of closing out trades, there, I want to know how it is done.

Mr. Robbins: I object to that. That is calling for a statement as to how most of the members of the Board close most of their trades. Now there isn't any foundation laid by which this witness knows how a single firm has closed its trade, except those for whom he worked.

The Master: I think you haven't qualified him sufficiently yet.

Mr. Jenks: Do you know how the members of the Board of Trade usually close up their speculative deals there which are made at the pits for future delivery, and how they have done that since you have been a member of the Board?

Mr. Robbins: I object to that. That isn't qualifying the witness.

Mr. Jenks: Isn't it?

Mr. Robbins: No, that simply asks if he knows.

A. You mean of the per cent of the trade?

Mr. Jenks: Do you know? Answer yes or no. A. Yes sir.

Q. In what manner do they usually close up their trades there?

Mr. Robbins: I object to that.

The Master: Overruled.

A. Shall I answer the question? By settlement,
617 rings, as I said before, going through the clearing house.

Mr. Jenks: Do you know what proportion of the deals at the pits, which are deals for future deliveries of commodity are closed up by rings, and what proportion are closed up in any other way?

Mr. Robbins: I object to that on the ground that the witness hasn't qualified on that.

The Master: Answer the question yes or no.

A. Yes sir.

Mr. Jenks: Will you tell what proportion are disposed of by rings, and what proportion in some other way?

Mr. Robbins: Same objection.

The Master: Overruled

Mr. Jenks: Answer the question.

A. Well, of course, I would know more about my own business and the people I work for than I would of the general

run of the floor, but you asked me how much of the transactions are settled, and what is delivered through the clearing house, and I would say that it was very nearly all, possibly there would be one per cent of the stuff delivered as cash, as of the trade.

Q. Nearly all of it is closed out by rings and through the clearing house, isn't it? A. Yes sir.

Q. Now as to your own business, was your business while you were conducting it for yourself on the Board of Trade extensive or limited?

A. I did quite a business there, did a good business.

Q. As to your own business, while you were acting as a commission merchant, what proportion of the deals on the Board resulted in actual delivery of the commodity, and what proportion resulted in settling and paying mere differences in price without any delivery?

A. Pretty near all my business was settled up that way through the clearing house, by rings. I don't think I ever received one per cent of the amount of grain that I traded there that was taken in in cash.

618 Q. Now is the sample which you gave of receiving an order from a customer by telegraph in the way as you have stated, was it usual for the customers to commence their transactions in the same way?

A. Was it usual, what do you mean?

Q. To fill the orders the way I would fill that?

Q. Was it usual for the customers to give you an order in substantially the same way that you have named? A. Yes sir.

Q. Was there any such thing known in the Board of Trade business as a stop order? A. Yes sir.

Q. What does a stop order mean?

A. Well, a stop order means if a man has that wheat he sends an order to stop the loss at a certain price.

Q. And that means what?

A. Buy the wheat at seventy-six, and the market would go down, he would send an order to stop at seventy-four and you would sell at seventy-four.

Q. And if the market does go down, what does the commission man do? A. Close the wheat out at seventy-four cents.

Q. When a man receives an order when a commission man receives an order, of that kind, with a stop order attached to it, what does he understand from that as to whether the customer desires to receive and pay for the commodity or not?

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A. He receives an order to buy wheat at seventy-six and to stop loss at seventy-four, and he has no idea of taking the wheat in and paying for it.

Q. How frequently are orders received for the purchase of commodities on the Chicago Board of Trade with a stop order attached thereto?

A. Orders at different times, I couldn't tell you how frequently, because they come every day.

Q. And when those orders are executed at the pits on the floor of the exchange room, what is done with reference to such a transaction being reported and sent out as a part of the market reports for the time?

A. That would make the market reports, the transactions.

Q. What sort of transactions are conducted at the
619 pits in the Exchange room?

A. What sort of transactions?

Q. Yes, are they for cash and immediate delivery, or are they for future delivery?

A. Future option, future delivery, of course.

Q. What do you mean by future option?

A. Well, trading now in the month of May, that would be an option; the month of January would be an option; the month of December would be an option.

Q. While you were in business for yourself, had you partners? A. Yes sir.

Q. What was the style of the firm? A. Hough & Company.

Q. And who composed the firm?

A. My two brothers and myself.

Q. For how long a time did that firm exist and do business on the Chicago Board of Trade? A. About 1879 until 1888.

Q. Where did they have their office?

A. First had our office at 66 Washington Street, and then when the Board moved out here in '85, our office was room 44, in the Traders' Building, I believe, yes sir.

Q. Right across the alley from the Board of Trade?

A. Yes sir.

Q. Did you have a blackboard there? A. No sir.

Q. Do you know how many commission firms, members of the Board of Trade, have and have had blackboards for the past ten years?

A. I couldn't tell you exactly, because I don't know, but there are a number of them.

Q. Do you know that some of them have? A. Yes sir.

Q. Will you give the names of those whom you know have blackboards?

A. Yes sir, Schwartz & Dupee, Lamson Brothers, C. H. Canby & Company, Counselman & Day, J. F. Harris, Milmine, Bodman & Company, Bartlett, Frazier & Company, Finley Bartell & Company, J. H. Wrenn & Company.

Q. Do those firms include some of the largest dealers among the members of the Board of Trade who are doing a commission business? A. Yes sir.

Q. Where are the offices of those men?

A. Well, Schwartz & Dupee and Lamson and Canby and Milmine and Harris are all on the Board of Trade on the main floor.

620 Q. In the Board of Trade Building?

A. Yes sir, Counselman & Day are over in the Counselman Building.

Q. To what use are those blackboards put?

A. To show the quotations and the transactions during the day for the benefit of the trade.

Q. At what times are those quotations put up there?

A. Anywhere from 9:30 to 1:15.

Q. Are they put there from time to time and continuously as the reports from the Board of Trade come in?

A. Yes sir, just as often as they can get them off of the tickers.

Q. In front of those blackboards in these offices, state whether they have chairs for customers? A. Yes sir.

Q. Which way do those chairs front, towards the blackboards or away from them?

A. Why, they face the blackboard.

Q. And during business hours of the Board of Trade, how are those chairs filled?

A. By customers of the house and others that drop in to see what the markets are.

Q. What is the object of putting up the market reports of quotations on the blackboard?

A. Keep the customers posted on the prices during the day.

Q. And as a result from the change in the markets, as that change appears on the blackboard, what may the customers do?

A. Buy or sell, as they choose.

Q. In just what way do they make the purchases or sales?

A. Through the house that they are trading with, giving them an order to buy or sell grain or stocks or anything else they want.

Q. And then sit down in the chair again? A. Yes sir.

Q. When the market changes again, then what may the customer do as to the trade that they have just before made?

A. Well, if he wants to close out his deals as profit, all right. If it is a sale, and he thinks the loss is all he wants to lose, he will close it out that way, but if he wants to

621 carry it over night he will tell them so.

Q. In what manner does he carry it out?

A. The same way, gives them the order.

Q. In what manner does the house settle that deal with the customer? A. If there is a loss he will probably pay them.

Q. And the loss or profit, is made up of what?

A. You mean the difference from the time he bought it and sold it, that would be the loss or profit.

of that

Q. And the house takes out difference, what?

A. Commission and tax.

Q. Suppose the house does not know whether that customer is responsible or not, what is required if anything, about margins? A. They ask him for margins before they fill the order.

Q. And the customer before they will fill the order has to do what? A. Make the margin good.

Q. Is there any rule or custom among those houses as to how much margin will be required on a transaction?

A. Yes sir, some ask more and some less, depends on who they are trading with.

Q. Trading for a customer that they don't know whether he is responsible or not? A. How much do they ask?

Q. Yes?

A. About five cents a bushel on wheat and a dollar or a dollar and a half on pork. Some three cents, depends on their standing.

Q. Are orders sometimes received by commission men from their customers reading for the purchase of a certain commodity at a price, and directions to close that commodity out if the price should advance to a certain figure?

A. They get the order this way. The order would be this way, "Buy ten wheat at seventy-six and sell it out at seventy-eight" and they act upon that order as given.

Q. And if an order of that kind be received by a commission man, what does the commission house do after filling the order?

A. Fills it according to instructions.

622 Q. And what notice does he give this customer as to whether the order is filled?

A. As soon as they fill the order they wire them or notify them in the city.

Q. Then if the price does advance two cents, does the commission man do anything without any further order from his customer?

A. Yes sir, that would be an open order for that day to sell it at seventy-eight cents.

Q. And what would he do? A. Sell it out.

Q. Then what would he do?

A. Deduct his commission and tax and send them a check for the difference or leave it there, as you please.

Q. Now if a commission man, being a member of the Board of Trade, should receive an order of that kind, and he knew that if the price went up he would sell it out and would settle the difference as you have stated, what, as a rule, on the Board

of Trade would the commission man know as to whether the customer, when he gave the order, intended to take, receive and pay for the commodity?

A. Well if he gives him margins of only five cents a bushel, he knows that he couldn't take the wheat and pay for it. He would know very well that the man was speculating and wanted the profit, that is all there is to that.

Q. Have you paid any attention to the transactions on the Board of Trade, at the pits? A. Yes sir.

Q. And the dealings in commodities for future delivery, so as to make an estimate of the amounts of commodities traded in there closed up by actual delivery and the amounts traded in closed up by a ring or settlement through the clearing house by merely paying or receiving the difference in the market price? (Question read.)

Mr. Robbins: I object to that because it is simply asking the witness whether he can express an opinion or not, and he hasn't shown the ground for such a question. In other words calling for the witness' opinion without qualifying him.

The Master: Yes, it is the same as a guess. It is as
623 good as anybody else's guess. I will let it go in for what it is worth.

Mr. Robbins: This simply asks this witness whether he has got an opinion as to how much the trades on the wheat pit are closed by delivery.

Mr. Jenks: That is not the question.

The Master: I consider that the question is whether he has observed it closely enough to make an estimate. He may answer.

A. Yes sir.

Mr. Jenks: Will you tell what proportion of the commodities there dealt in and by there, I mean at the pits, in the Board of Trade, per month or year result in actual delivery and what proportion result in a ringing up of the deals or settlement through the clearing house by paying or receiving the difference in the market price?

The Master: Same objection and same ruling. He may answer.

A. I think less than one per cent in cash, and the balance is settled up in rings.

Mr. Jenks: Covering what period of time is that a fact?

A. What do you mean?

Q. I mean whether for a day, month, year, or anything?

A. All the time.

Q. All the time that you have known anything about the Board of Trade? A. Yes sir.

Q. Do you know in what manner the market reports are gathered at the pits for the purpose of being sent out from the Board of Trade?

A. They are not reported—they are reported. They report the market.

Q. You do know that? A. Yes sir.

Q. What transactions are reported by those reports?

A. Every change in the quotation.

Q. Do you know anything about scalpers or scalping
624 deals at pits on the floor of the exchange room of the Board of Trade? A. Yes sir.

Q. What is a scalper, and what is a scalping deal?

A. A scalper is a man that will buy five wheat and sell it out at an eighth profit, or sell it out at an eighth loss. Most of them take an eighth when they are scalping.

Q. And if he makes a deal and the initial transaction would be a purchase, in what manner does he close that deal out?

A. Sell it out, and it is rung up. If he sells it out it is rung up.

Q. Do you know that there is a certain class of scalpers operating on the floor of the exchange room of the Board of Trade they themselves being members of the Board, who stay there all the time and watch the transactions, and whenever they can get in with a deal where they think they can make a little money as profit will, if the transaction is either a purchase or a sale, close that transaction out before the close of the Board that day, and have nothing on hand at night?

A. They would be even on the market, yes.

Q. And are there scalpers who do that? Have a deal in the morning and close it out before night, how do they settle those deals?

A. If they are closed, make it up by settling up through to clearing house, some of them settle through other houses.

Q. And in what manner is the transaction absolutely closed up? A. By settlement, rings, that is all, from one to the other.

Q. The deal in general, is what, a payment, isn't it, by one to the other? A. A payment, yes.

Q. Payment by one party and receipt by the other?

A. Yes sir.

Q. That payment consists in what, the difference between—

A. Why, if a man is at a loss, he puts up the price at what he bought, and the price he sold, at the settling price. It doesn't make any difference, it is the price of the commodity, anyway.

Q. It is the difference between the two prices that they close the it up on by payment of? A. Yes sir.

Q. When a man acts as a scalper there on the floor
625 of the exchange room, have you had experience with those people so that you know what his intention is at the initial transaction as to whether he intends to receive and pay for the stuff if bought or to deliver it if sold? (Question read.)

Mr. Robbins: I object to that.
The Master: Sustained. (Question read.)

Mr. Jenks: Have you had any experience in business with scalpers on the floor of the exchange room in the Board of Trade? A. Yes sir, I have been scalping myself.

Q. Where you are acting as a scalper yourself, and you had a deal on the floor of the exchange room of the Board of Trade, if that transaction was a purchase by you, what was your intention at the time as to whether you would receive and pay for the commodity?

Mr. Robbins: Objected to as irrelevant.
The Master: He may answer.

A. I had no idea of it being delivered at all.

Mr. Jenks: But your intention was in that transaction when you made a purchase, to do what, how did you intend to close it out?

A. Well, it was to make money if I could at a higher price.

Q. Make money in the difference in what?

A. Between the price bought and the price sold.

Q. Now are those transactions collected by the market report collectors, and do they go out as fixing the market price on the Board of Trade? A. Yes sir.

Q. You have spoken of the clearing house. Do you know for what purpose the clearing house is used by members of the Board of Trade? A. Yes sir.

Q. For what purpose is it used by such members?

Mr. Robbins: Wait a minute. The witness hasn't qualified himself as to that. Simply asking if he has an opinion.

Mr. Jenks: Do you know what I did ask?

Mr. Robbins: Yes, i do.

The Master: He may answer. Objection overruled.

(Question read.)

626 A. Settling up their trades, collecting and paying the differences.

Mr. Jenks: What kind of trades can be settled up through the Board of Trade clearing house? A. Future options.

Q. What?

A. Future options on all kinds of commodities.

Q. In dealing on the floor of the exchange room of the Board of Trade of Chicago, what persons have a right to transact any business there at the pits? A. No one but members.

Q. Now members dealing there between themselves, state whether the customers of the different members who may be commission men, are known to the opposite party with whom they make a deal? A. No, sir.

Q. Then in making a transaction between two members of the Board at the pit, that transaction being either purchase or sale of a commodity, those two members, as between themselves, are what, principals or agents for somebody?

A. They are agents.

Q. As between themselves, I asked you?

A. As between themselves, they make the trade for themselves, and they are principals. If they trade for other people they are brokers or agents.

Q. They are agents so far as their customer is concerned, but between themselves no customer is known, is there?

A. No sir.

Q. Now we will suppose that a transaction is made by two members at the pit, and that transaction is a purchase in a commodity to-day, and we will suppose that afterwards the same two members have another transaction, and the one who is a purchaser to-day is a seller to the other of the same commodity for the same delivery but at a different price, how are those two transactions closed up between the two members?

A. Generally settled through the clearing house.

Q. In what way?

A. Making up rings, making a ring of it.

Q. Now, that is a case where I say one member of the Board of Trade bought from another member of the Board and afterwards sold to the same member of the Board the same commodity for the same delivery but at a different price?

627 A. Direct settlement. Clear it through the clearing house.

Q. Clear it through the clearing house in what way?

A. If one had the "sold" contract and the other had bought the same quantity, by paying the difference in price.

Q. And the amount either paid or collected is what?

A. The difference between the prices bought and sold.

Q. Now you take those two transactions that I have just named and state whether those two transactions are collected

together into the market reports and are sent out the same as any market reports from the exchange room of the Board?

A. Yes sir.

Q. And it is just the same as the transaction conducted by scalpers?

A. One trade makes the market just the same as any other.

Q. Are you familiar with the different transactions which they have up there? For instance, two members of the Board have a deal together at the pit. One buys from the other a commodity for future delivery and afterwards one of them notifies the other to transfer that account to somebody else?

A. Yes sir.

Q. Are you familiar with that? A. Yes sir.

Q. What is that thing called there on the Board?

A. Transfer of trade from one member to another.

Q. Do you know whether those transactions are frequent on the Board of Trade? A. Yes sir.

Q. And how many men do they have in a deal of that kind where they transfer a deal from one to another?

A. Well it might be two that is all and there might be three.

Q. Might be more?

A. For instance if I trade, and you and I want it transferred to another, and he wanted it transferred to Mr. Shea, we would transfer it right around.

Q. And if you had notice of a ring of that kind where there are half a dozen members in it, as a usual notice up there, do they transfer the deal from one straight across to the other?

A. Not when there is a ring there.

Q. Do they transfer the transaction when there are three parties to it?

A. Never transfer the trade where there is ring made
628 up because that settles the trade. They don't like to break the ring.

Q. Suppose a ring is not made up, that is to say, the ring is not perfect, but there are half a dozen parties in it, and we get down almost to the end of the ring, and there is a link missing. Now do they give notice one to the other so that the deliveries will be made by the two people at the end of that ring where the missing link is?

A. They give notice that the ring is broken, and it doesn't go through, so the transaction is as it was in the first place.

Q. I know, only I have got more people in it now.

A. We will go and deliver—that is the ring is busted.

Q. Do they also notify them—say Robbins is at the end of the ring on one side, and Mr. Shea at the other, and there is no complete ring there between them. Do you notify Mr. Shea

to deliver to Mr. Robbins and Mr. Robbins to continue the transaction with Mr. Shea?

A. I notify Mr. Shea that the ring is busted, Mr. Robbins' party would notify him. There is no delivery of it.

Q. We haven't got to the delivery. That is what I am after. Perhaps you understand it, but you may not. I haven't asked you whether they have this sort of a transaction up there; I make a deal with Mr. Shea; I buy from him and it goes clear around until somebody buys from Mr. Robbins; now we being members of the Board of Trade and honest men, of course we don't want to cheat the government out of a revenue stamp, so that these four or five people out here in the loop, they notify the two parties at the end of this ring to put that transaction down, between each other so that they have just one revenue stamp?

A. Yes, that would be a very good thing for them.

Q. Do you know of them doing that sort of business?

A. Yes sir.

Q. Now, I want to know what they do, the reason of that and why they do it?

A. Get both of them to transfer their trade to Mr.
629 Robbins and Mr. Hill—the ring started in the first place didn't go through so they have to transfer either way, and Mr. Robbins and Mr. Hill would take the wheat off their hands at the price it was sold.

Q. So that they get along with one revenue stamp for a half a dozen sales of the commodity?

A. That wouldn't need any revenue stamp.

Q. How is it that nobody but members of the Board of Trade can conduct transactions at the pit, under whose control is that pit?

A. Under the rules of the Board of Trade, under the control of the Directors.

Q. Of the Board of Trade?

A. The officers of the Board of Trade, yes.

Q. Who maintains the pits, to wit, the exchange room of the Board of Trade, which enable the members of the Board to do the kind of business that you and I have been talking about?

A. Who maintains the Board?

Q. Who maintains that place, the exchange room?

A. Why the members.

Q. The Board of Trade itself, don't it?

A. The Board of Trade member is the Board of Trade.

Q. No he isn't. Now does the Board of Trade maintain that room?

A. They have to collect the dues and rent and so forth.

Q. The Board of Trade owns the building, don't it, the whole thing. The Board of Trade itself, don't you know that?

A. No sir.

Q. Then you ain't the witness I want on that subject. Who maintains the clearing house?

A. The Board of Trade members.

Q. The Board of Trade members or the Board of Trade?

A. The Board of Trade pay the salary but the members pay the money to maintain it.

Q. I didn't ask who collected the money?

A. The Board of Trade maintains the clearing house, certainly.

Q. And the Board of Trade maintains the pits?

A. Yes sir.

Q. The actual pits? A. Certainly.

Q. Mr. Hough, do you know what a hedging deal is?

A. Yes sir.

630 Q. What is it?

A. Where you trade in one market and hedge in another, a man selling one option and buying in another, right here on the Board of Trade, we will say.

Q. Is it also where a man has a commodity and he wants to hedge that commodity in this market—in the Chicago market, and he wants to sell the commodity—ship it or sell it in some other market, is his sale here on the Board of Trade under such circumstances called a hedge? A. Yes sir.

Q. In what manner is that hedge sale closed out after the man who makes the sale disposes of his commodity in another market and sells the commodity there?

A. He buys the commodity back that he sold the same as he made the trade on the Board of Trade.

Q. If the first sale was a hedge, how are the two transactions finally closed up, the sale and the purchase?

A. By ring settlement.

Q. By ring, settlement and payment of what?

A. Of the loss, or collect the profit.

Q. And that loss or profit is made up of what?

A. The difference between the prices of purchase and sale.

Q. Are those transactions on the Chicago Board of Trade frequent or seldom?

A. They are not quite so frequent as trades in future options would be.

Q. These are all futures, are they not? A. Yes sir.

Q Well, they are not quite so frequent as the other speculative transactions that do exist there? A. Yes sir.

Q. Did you ever know of a sale to be made on the Board of Trade as a hedge? A. Yes sir.

Q. Did you ever know of anybody buying in that sale made as a hedge and receiving the commodity bought in?

A. No sir.

Q. Did you ever know of his delivering a commodity that he sold as a hedge? A. No sir.

Q. If the commodity is sold as a hedge, anyone that you knew about, what was the intention as to delivering that stuff that as sold as a hedge at the time the transaction was made?

A. Did not intend to deliver it.

631 Mr. Robbins: Wait a minute. I object to that.

(Question read.)

The Master: Sustained, if not confined to himself. You cannot know a man's intention.

Mr. Robbins: That answer goes out.

The Master: Yes.

Mr. Jenks: Did you make any sales of property as a hedge yourself? A. No sir.

Q. Have you known of other people making sales of property as a hedge? A. Yes sir.

Q. Will you state whether those sales made by other people as a hedge are collected by their reporters and transmitted over the wires as market reports? A. Yes sir.

Q. Do you know the difference between a cash transaction on the Board of Trade and a deal for future delivery?

A. A cash transaction is—

Q. Wait. The question is, do you know?

The Master: Yes or no. A. Yes.

Mr. Jenks: Will you tell what the difference is between the two? (Question read.)

The Master: Answer the question.

A. I answered once, I said yes.

The Master: The other one is now, to state what it is, as I understand?

A. A cash transaction is deliverable as cash wheat at certain hours of the day, and a future option is an option made for some future month.

Q. If a transaction is cash, when is the commodity deliverable?

A. Deliverable—I couldn't tell you exactly now. It used to be before eleven o'clock and then between the hours of one and two after change was closed—I mean between 1:30 and two.

Q. You mean [the of] same day it is deliverable?

A. Same day.

Q. And it is payable at that same time? A. Yes sir.

Q. Now as to a deal in a commodity for future de-
632 livery, say the option for December wheat, when is that wheat deliverable?

A. Any time between the first of December and the last day of the month.

Q. At whose option? A. That is at the seller's option.

Q. As a rule, in those options for the month, when does the seller deliver, in the first day of the month or the last day of the month?

A. The first day of the month are the large deliveries.

Q. Do you know why that is so? A. Yes sir.

Q. Why is it that a man who has an option to deliver at any time during the month elects the first day of the month to make the delivery?

A. Wants to get rid of the wheat and collect his money.

Q. Anything about storage charges?

A. Cut off storage and so forth by doing it.

Q. Do you know anything about this sort of a transaction being conducted on the Board. Say a man has a half a million bushels of corn, and purchases for December option, and it is getting near the month of December, say, to-day, it is almost up to December. Is there such a thing on the Board that the man sells out his December corn and wants to transfer that to the month of May, and he sells out his December and buys in for the month of May? A. Yes sir.

Q. Are those transactions frequent on the Board of Trade?

A. Yes sir.

Q. Now if a man, after such a purchase makes such a transfer, how does he close up the first transaction which was a purchase of December corn, and a sale of December corn, how does he close that up? A. Mostly by settlement, ringing it up.

Q. It is closed by a ring, in the same way? A. Yes sir.

Q. Then how does a man transfer his December option to a May option in corn?

A. Suppose he is short December corn—if he is long on corn, he sells it out and buys the May, the different prices, that is all.

Q. That closes up the December transaction—he
633 closes up December transaction by ringing it up and merely paying the differences in the market prices?

A. Yes sir.

Q. And by those two transactions where a man wants to transfer, it is his only object in doing it—is to transfer his December option in corn to a May option in corn. Are those two

transactions reported, collected and sent out as fixing the market reports which are sent out from the floor of the Board of Trade? A. Yes sir.

Cross-Examination

By Mr. Robbins:

Q. After your firm ceased to exist in '88 or '87, who did you work for? A. I was doing a brokerage business for myself.

Q. A brokerage business for how long?

A. About two years.

Q. How long? A. Two years.

Q. What do you mean by a brokerage business?

A. Filling orders for other people, and giving the names up.

Q. Standing there and taking orders for other people and giving the names up at once? A. Not always at once.

Q. During the day? A. During the day.

Q. In those transactions where you acted as broker, you had nothing to do with the closing of the transactions or anything? A. Just giving the name of the party.

Q. You made the trade in his name?

A. I made the trade for him, the one who gave me the order.

Q. You would give up to the other party on the Board of Trade your customer?

A. I didn't say my customer. It would be a commission house or a member of the Board of Trade.

Q. The man employs you to act as broker? A. Yes sir.

Q. You gave up his name in the trade during the day?

A. Yes sir.

Q. That class of trade wouldn't enter onto any books of yours, would it? A. No sir.

Q. You would be paid a certain brokerage for the transaction and that would be the end of it? A. Yes sir.

Q. You would have nothing to do with the closing of the transaction either by ringing up or delivering, would you?

A. No sir.

634 Q. And you wouldn't know anything about it, would you? A. No sir.

Q. Did you confine yourself during those two years to the brokerage business? A. Most of the time.

Q. You weren't yourself in the commission business?

A. No sir.

Q. What did you do after that?

A. I went to work for Schwartz & Dupee.

Q. Schwartz & Dupee. How long did you work for them?

A. About four years.

Q. What did you do?

A. Trading on the floor for them, in the wheat pit most of the time.

Q. Did you have anything to do with their books, keeping the books? A. I didn't keep the books, no sir.

Q. Have anything to do with keeping their delivery book?

A. No sir.

Q. Or ringing up their trades? A. No sir.

Q. Your work was confined to making trades on the floor?

A. Filling the orders.

Q. And your work practically ceased when the market closed? A. After I had checked my trades.

Q. But so far as ringing the trades, or making deliveries on the trades, you had nothing to do with that?

A. No, I had nothing to do with that.

Q. And that was the character of your business during the four years you were there with Schwartz, Dupee & Company?

A. I was trader and manager in the business.

Q. For how long? A. Four years I think.

Q. That is the time you were up in the wheat pit filling the trades?

A. No sir, I was manager in the office after we got through filling the trades down stairs, assistant manager.

Q. You were assistant manager in the office? A. Yes sir.

Q. I thought you said that your duties ceased after you had got through with the market?

A. I didn't say my duties ceased. They ceased when
635 I checked up the trades in the office. I had to see to that, and see that it was entered on the sheets and all that sort of thing.

Q. Your connection with the trade ceased as soon as you checked out in the afternoon? A. Yes sir.

Q. Who did you work for after you got through with Schwartz & Dupee?

A. I worked for Bartlett and Frazier and Lamson and for the Illinois Ticker Company.

Q. How long did you work for Bartlett & Frazier?

A. Two years.

Q. In what capacity?

A. Trading on the wheat pit and on the telephone.

Q. While you were on the telephone you didn't fill any orders, did you? A. No sir.

Q. How long were you on the telephone?

A. I should think about nine months, I should think, maybe a little longer, I couldn't tell exactly.

Q. And you didn't have anything to do with their books or with those trades after you had made them on the floor and checked them up down in the office? A. No sir.

Q. Didn't know anything about their deliveries or their ringing books? A. I had nothing to do with settling that.

Q. Now you worked over there to Lamson Brothers, did you?

A. I worked for Lamson about two months while a couple of their clerks were away.

Q. What place did you take?

A. Telephone business on the floor.

Q. Telephone man on the floor for two months?

A. Yes sir.

Q. As telephone man you took orders by telephone and sent them to the traders in the pit? A. Took them myself.

Q. Delivered them to their representatives in the pit?

A. Yes sir.

Q. Who did you work for after you got through with Lamson Brothers? Is that all you did for Lamson Brothers?

A. Yes sir.

Q. You didn't know anything about their books or their trades?

636 A. I knew nothing about their settlements or books at all.

Q. What did you do after you got through with them?

A. Traded for myself speculated on the open board.

Q. Was that before or after you ceased to be a member of the Board of Trade?

A. After I ceased to be a member of the Board of Trade.

Q. When did you cease to be a member of the Board of Trade?

A. September, November or October, I don't know the date exactly.

Q. October a year ago? A. It was last fall, yes sir.

Q. Was it the last two months of that time you were working for Lamson Brothers?

A. Worked for Lamson in August and September. I sold my membership while I was working for them.

Q. Who else had you worked for during the time you ceased as a broker, and after any of the time you ceased to be a member of the Board of Trade? A. Not any one.

Q. You have narrated all the firms you worked for and all the kinds of work that you did?

A. That is my recollection.

Q. Since October last, you have been trading somewhat on the open Board, you say? A. Yes sir.

Q. For yourself? A. Yes sir.

Q. Are you a member of the Open Board? A. No sir.

Q. How do you trade on the open Board if you are not a member?

A. Through a broker, commission man, member of the Board.

Q. Well, what else have you been doing?
A. Nothing particular.
Q. What? [—] Nothing particular.
Q. What else have you been doing for which you have been paid since you left the Board of Trade?
A. That I have received a salary for?
Q. That you have received payment for in any way?
A. I put in tickers for the Telegraph News Company, that is one thing. I was in the Accident Life Insurance business for the North American Company for a while.
Q. What did you do there? A. Solicited.
Q. Solicited policies? A. Yes sir.
637 Q. What else?
A. I don't know, Mr. Jenks, as that has anything to do with the case.

Mr. Jenks: What is the question?

A. He wants to know what I have been doing. I think that is irrelevant.

Mr. Jenks: I object to the question. I think the witness is right.
Mr. Robbins: I have a right to know what this witness' business is.
The Master: He has a right to go into that—what your business is up to the present time.

A. It is nothing.

Mr. Robbins: Now answer the question.
Mr. Jenks: What is the question? (Question read.)

Mr. Jenks: What else besides doing nothing is your business?
)

Mr. Robbins: Answer the question.

A. Been looking for a job.
Q. What else have you been doing for which you have been paid? A. Nothing, I said.
Q. What? A. Nothing.
Q. Since last October you have not done anything?
A. I didn't say since October last.
Q. Since October last you say you have done nothing—
A. Except trade in the open Board, and working for these people.
Q. For which you have been paid. Is that right?
A. Yes sir.
Q. Have you been posting race news on that blackboard in the last year? A. Posting what?

Q. Posting race news from the ticker on the blackboard?
A. No sir.
Q. And calling that off from the ticker in any place in Chicago? A. No sir.
Q. At a saloon on the corner of VanBuren and Sher-
638 man Street in the city of Chicago?
A. Calling off race news and putting it on the blackboard?
Q. Have you done work in that saloon in any capacity?
A. No sir.
Q. Doing any work in that saloon? A. No sir.
Q. You weren't on the Board of Trade at all in the year 1900? A. No sir.
Q. Weren't your dues delinquent during the entire year up to October, 1900? A. No sir.
Q. Weren't they delinquent up to October that year?
A. No sir, I couldn't have sold my membership if they were.
Q. Weren't the dues deducted from the price of the membership when you sold it? A. No sir.
Q. What have you been doing for the last thirty days?
A. The last thirty days? Travelling around trying to put in tickers for the Ticker Company.

Thereupon, at 4:45 P. M. an adjournment was taken until ten o'clock, Saturday, November the 30th, 1901.

639 November 30th, A. D. 1901.

Parties met pursuant to adjournment at 10 o'clock a. m.

The Cross-Examination of Walter C. Hough was resumed by Mr. Robbins as follows:

Q. What is the total yearly shipments of Lard from this market in a year? A. I do not know, sir.
Q. What is the total yearly product of Lard in this market?
A. I do not know.
Q. How about pork, mess pork? A. I do not know.
Q. Either the shipments or the production or the receipts?
A. No sir.
Q. What are the yearly receipts of the different kinds of grain in this market every year?
A. It is hard to tell; some years it is larger than others.
Q. Well, what was it last year? A. I do not know.
Q. What was it any year? A. I don't recollect any year.
Q. What are the shipments from this market of grain for a year? A. I do not know, sir.
Q. What amount of grain, actual grain, is involved in the transactions in a year on the Chicago Board of Trade?
A. A low average would be fifty millions a day.

Q. What is the average amount of lard, pork and short ribs, the actual product, involved in the transactions that pass through the Board of Trade in a year?

A. I said I did not know.

Q. What record is kept in the Board of Trade to show the amount of grain delivered on the transactions of the Board of Trade? A. I couldn't tell you.

640 Q. Do you know of any record kept on the Board of Trade showing the aggregate of deliveries of grain there for any given time? A. No sir, personally I do not.

Q. Don't you know that no such record is kept?

A. No sir, I don't know.

Q. Have you ever known of such a record? A. No sir.

Q. What record is kept that will show the total quantities of grain, or hog products, that are involved in transactions that are made on the Chicago Board of Trade? A. What records?

Q. Yes? A. I don't know.

Q. Do you know of any record to which we can go to ascertain the total amount involved in the transactions on the Board of Trade? A. The only one I know is Howard's Circular.

Q. What?

A. Howard's Circular; Howard & Bently is the firm; I believe they keep a record.

Q. It is not kept under the Board of Trade at all, is it?

A. No sir, it is outside.

Q. It is the publication of some outsider?

A. Publication of a circular.

Q. What way have you taken to ascertain the amount, total amount of the property that has been delivered upon these Board of Trade transactions? A. You mean delivered?

Q. Yes, what method have you taken to ascertain the total amounts of the deliveries?

A. I didn't say anything about the total amounts of deliveries; I said about the total amounts of trades made.

Q. Is there any record to which you have resorted to ascertain the total amount involved in the trades of the Board of Trade? A. Only my own experience and observation.

Q. Is there any record that you have resorted to for
641 that purpose? A. No sir, there is no record.

Q. Do you know of any record that is kept?

Mr. Jenks: He said there was none.

Mr. Robbins: Q. You say there is no record?

Mr. Jenks: I will object to this line of cross-examination as not being an examination in regard to anything that the witness testified to in his direct examination, and therefore not a proper cross-examination. Mr. Robbins starts out this

morning by asking the witness about half a dozen times after the witness has answered, and he is pursuing a line of cross-examination not relating to what the witness testified to in his direct, and I therefore again object for the reason that this is not a proper cross-examination of the witness. Now, I do not object if he wants to make the witness his own, but I do object to this line of examination if he is to consider it as a cross-examination.

The Master: Just proceed with the questions and I will pass upon them as they are asked.

Mr. Jenks: In order to understand the objection the Master should know about half a dozen of the last questions and answers.

(Last six questions and answers read.)

The Master: That is tending to sustain their contention that less than one per cent was genuine transactions and that the rest were speculative. I think he may answer.

The Witness: That is kept of what?

(Last three questions and answers read.)

A. No sir, I do not.

Mr. Robbins: (Q.) Your connection with the Board of Trade since 1888 has been as a floor man, hasn't it?

642 A. In 1888 and 1889 I was a broker for myself.

Q. I mean either for yourself or for somebody else your duties have been upon the floor of the Exchange?

A. Yes sir, mostly.

Q. Mostly, and entirely during the market hours?

A. Well, not always.

Q. Well, as a usual thing?

A. I could go down in the office and look over matters.

Q. Yes, but I mean— A. As a general thing, yes sir.

Q. Your work has been upon the floor itself, it has not been concerned with these rings? A. Sir?

Q. Has not been concerned with the making of these settlements by rings? A. No sir.

Q. What record is kept by the Board of Trade, or by anybody that you know of, that will enable us to ascertain the total number of trades or the total amount involved in trades that are settled by means of this ring system?

A. The Clearing House is the only record.

Q. Does the Clearing House keep a record that will show the number of trades closed or the amounts involved in the trades closed through the system of rings?

A. It would show the number of trades made and closed and cleared through the Clearing House.

Q. Would it show anything more than the daily balance one way or the other of either party?

A. Just daily balances, that is all.

Q. When there is half a dozen trades between the members, would there be one item on the balance sheet or half a dozen?

A. It depends on how the settlement was made.

Q. Do you know anything about the Clearing House system?

A. I know there is a Clearing House.

Q. Have you ever been a member of the Clearing House?

A. Yes sir.

Q. How long since?

643 A. When I was in business for myself I was a member of the Clearing House.

Q. Have you, since 1888, been a member of the Clearing House? A. No sir.

Q. Look at that sheet "Defendant's Exhibit 1" and see if that is the Clearing House sheet?

A. Yes sir, that is the Clearing House sheet.

Q. Now, if one firm—or settlements of one firm with another involve half a dozen transactions instead of one, how many entries would be made on the Clearing House sheet?

A. Well, if there was more than one party in the ring, there would be more ring, because—

Q. I am speaking—

Mr. Shea: Let the witness answer.

A. (continuing)—he would have the credit due to every party that he owed in the ring; one party might pay all.

Mr. Robbins: Q. Isn't it true that the amount—that all that is put on that sheet is the amount due from one member to another, regardless of the number of transactions that enter into the result?

A. The amount that is put on the sheet shows what a member of the Board owes in the Clearing House on the trades that have been rung up.

shows

Q. It only once every day the amount due from one member of the Board to another, is that right?

A. One member? There might be more than one member; lots of members.

(Question read.)

A. No sir, not one member to another; he might have a dozen trades there; there would be more than one member.

Mr. Robbins: I want that question answered. Don't
644 you understand that question? I have asked the witness a question and don't get any answer.

The Master: Repeat the question please.

(Question read.)

A. My answer was, it may show more than from one member to another; several members.

Mr. Robbins: The question is what it shows as between two members of the Board of Trade on one day?

A. Only two members?

Q. Yes? A. It shows more than that.

Mr. Jenks: Read the question to the witness.

(Question read.)

Mr. Jenks: Suppose it shows only two members?

Mr. Robbins: No we needn't suppose anything. I am asking what it shows as between any two members?

A. If there is only one trade in the Clearing House between one member and another it would only show between two members.

Q. Would it have more than one item as between two members?

A. No sir, not between two members; that's all right.

Q. Now, if there was six trades between two members instead of one, would there be more than one item on the Clearing House sheet as between those two members?

A. In settling up the trades, do you mean?

(Question read.)

A. No sir.

Q. Then does the Clearing House sheet at all show the number, even the number of trades that are settled?

A. No sir.

Q. Does the Clearing House sheet show the volume of the business covered by the trades that are settled?

645 A. You mean the amount of the commodity? No sir.

Q. Is there anything that you know of that is in the possession of the Clearing House that will enable us to ascertain the number of trades that are adjusted by this ring system?

A. No sir.

Q. Is there anything in the Clearing House records that will enable us to show the volume of the trades included—the volume or quantities included in the trades settled by this ring system? A. No sir, not that I know of.

Q. Do you know of any records that were outside of the individual offices of the members that would enable us to ascer-

tain either the number of the trades settled by the ring system or the quantities involved in those trades? A. No sir.

Q. Isn't the Clearing House system provided for the collection of the balances between members, whether they result from future trades or in any other way?

A. I don't know that.

Q. What record is kept by the Board of Trade of the number of transactions that are closed by actual deliveries?

A. I don't know.

Q. Do you know of any such record? A. No sir.

Q. What record is kept by the Board of Trade or anybody that you know of that shows the volume or quantity of the commodities covered by trades which are settled by actual deliveries of the property? A. I don't know of any record.

Q. With what firm that you are connected have you had to do with deliveries? A. A number of them, sir.

Q. The firms have regular clerks for that purpose, do they?

A. Yes, sir.

Q. And you have never filled that office for any of them?

A. No sir.

646 Q. Have you made an investigation of or are you familiar with the record books or papers of any individual firm on the Board of Trade with a view to ascertaining how many trades, or the volume of business covered by the trades settled by them through the Clearing House by the system of rings? A. No sir.

Q. Have you made an investigation into the records, books or papers of any firm on the Board of Trade to ascertain the number of trades which were settled by deliveries or the quantities involved in those trades? A. No sir.

Q. What investigation have you made in order to ascertain the number or volume of trades which have been closed out through the ring system? A. No investigation.

Q. What investigations have you made to ascertain the number of trades or the total quantities covered by the trades that have been closed by means of actual deliveries?

A. No investigation; I have answered that three times.

Q. In what manner do you ascertain the total number of trades or the quantities involved in the trades that have been closd through the ring system?

A. Judge, I have answered that three times. I said no investigation at all.

Mr. Robbins: Read the question.

(Question read.)

A. I said I made no investigation.

Q. Well, how do you arrive at that? A. Arrive at what?

Q. The results covered by the previous question?
A. I said I made no investigation.

The Master: I understand what you want to find out is whether this witness was simply guessing or what he was doing. He may answer the question.

647 A. I said before in regard to the volume of trades, that according to my own business and the business of houses I have been with, that I knew very nearly, could say what the volume of trade would be during the day.

Mr. Robbins: The question was not asked you as to the volume of trade but the number of trades and the volume of business covered by the trades which were settled through the ringing system. Now, I asked you in what manner you have arrived at your figures on that subject? A. You asked me—

Mr. Jenks: Read the question to the witness and let him answer it.

(Question read.)

A. From my own observations in regard to the trades.

Mr. Robbins: Q. Explain how you have observed the number of trades or the volume of trades covered by these settlements if, as you say, you did not at any time participate in the settlement?

A. I don't think that I am forced here to give away people's business.

Mr. Jenks: Answer the question.

A. I answer by my observation and what I know other people have been doing there, certainly.

Mr. Robbins: Where was your observation made?

A. When in the pit.

Q. Well, now, where are the settlements through ringing carried on, in the pit? A. No sir.

Q. Well, how could you, in the pit, have observation sufficient to state the number of trades or the volume of those trades that are closed by the ringing system?

A. Because I know very nearly what the houses were doing, what they would trade in in a day what the scalpers
648 would trade in, and I said on an average that fifty millions would be a low average a day.

Q. I am not asking you about the volume of business; I am asking you about the volume of the trades that are closed through the ringing system and I would like to have you state what observation you have had of that system in the wheat pit or elsewhere to enable you to determine the number of trades or the volume of trades that are settled through that system?

A. By asking the settlement clerks in my own house and houses they work for the volume during the day, how much they had settled up.

Q. So that your testimony on that subject is based upon what settlement clerks have told you?

A. Certainly, I didn't settle them myself.

Q. And your estimate of the total amount would be based upon that class of information?

A. On what they said, certainly.

Q. When did you ever ascertain from the settlement clerks of all the members of the Board of Trade the number of trades and the volume of business that have been settled in a given time? A. I never have ascertained.

Q. What? A. I never have ascertained.

Q. How many settling clerks did you speak to any given time?

A. No one outside of my own house and the house I worked for.

Q. So that all your information with reference to the number of these trades and their volume is derived from your talk with settling clerks in your own and in the houses that you were connected with? A. No sir.

Q. Well, what else?

A. My observation on the floor of the trades as I was telling you about.

649 Q. Explain again how, in the pit of the Exchange, you could tell anything about the number of trades or the volume of trades that were closed by the ringing system?

A. Standing there all day and seeing them trade I would know that not one per cent of the trades that they made would be deliveries; and it must be settled by the ringing system.

Q. Explain how you would know that standing in the wheat pit?

A. Because I know there is not one commission house on the Board that does an option business that expects to get any cash wheat delivered.

Mr. Robbins: I move to strike that out.

Mr. Jenks: I object to striking it out.

Mr. Robbins: It is a voluntary statement of the witness and is not answering any question.

The Master: I don't think that is irresponsive. He says he knows it. Now, you ask him how he knows it, and about all he says is he is guessing; that is about all I can see.

Mr. Robbins: What I asked him is how he can tell, in the wheat pit, the number of trades that are covered by the ring

system, or the volume, and in answer to that he says the members of the Board of Trade don't intend to deliver. That is no answer.

The Master: That may stand. He may answer, however; that is, he can say that is the only way he knows.

A. That is the only way that I know.

Mr. Robbins: Q. Now, standing in the wheat pit, how do you ascertain that the members of the Board of Trade don't intend to deliver any trades they make?

Mr. Jenks: Tell them all about it.

650 The Witness: Shall I go back and tell them all about it?

Mr. Robbins: You answer that question.

The Master: Answer the question.

Mr. Jenks: To answer the question gives him a chance to tell all about it.

Mr. Robbins: You answer the question? Later on you can tell Mr. Jenks all about it in his redirect examination.

(Question read.)

Mr. Robbins: Now, the question is, what there is in the wheat pit?

Mr. Jenks: Never mind; that is the question. Are you putting another one?

Mr. Robbins: Let me talk, I didn't interrupt you.

Mr. Jenks: The talk will be put down here, and if you put another question I want the other question to be answered.

The Master: Can you answer that question?

A. Yes, sir.

Q. Answer it?

A. It would be this, any orders received by the Board of Trade, they are filled in the wheat pit, the options, for future delivery and the customers don't ever expect to get that wheat.

Mr. Robbins: I move to strike that out. I did not ask what the customers did in the wheat pit, but what there was in the wheat pit to enable this witness to answer.

The Master: I didn't understand that—

Mr. Robbins: Read the question.

The Master: That is the way I thought the question was. You have not asked him whether there was anything in the wheat pit, anything occurring there or happening.

Mr. Robbins: That is what I mean by standing in the wheat pit.

651 The Master: If you prefer the question that way.

Mr. Robbins: I move to strike that out anyway.

The Master: No, I think that question may stand, but you may change your question.

Mr. Robbins: Q. What is there occurring in the wheat pit that enables you to tell that the persons making trades there don't intend to deliver?

A. My own experience in the Board of Trade and filling orders like every body else.

Q. That is all the answer you can give us? A. Yes sir.

Q. Suppose you had made a trade in the wheat pit and reported it to your house and nothing else was done, what would happen?

A. Nothing else was done? I made a trade for my house?

Q. Yes? Armour and Company or any house you was with?

A. I would have the trade on a card and report the trade to them, and they would report it to the customer by wire or send it downstairs.

Q. Well, what would happen if the customer did nothing more?

A. If it was a purchase he would be long on the wheat.

Q. What would happen?

A. If he sold, he would be short on the wheat.

Q. What would happen then?

A. It would stand on the books until he got ready to close it out.

Q. Suppose he didn't close it out?

A. Suppose he didn't close it out?

Q. Yes? A. If his margin ran out he would be closed out.

Q. Suppose the margin didn't run out?

A. It would stand up there; they would call on him for more margin.

Q. Suppose the time arrived, the last day of the month for which it was sold, what would happen?

652 A. We would ask him to either change it to another —to take the wheat and pay for it or change it over to some other option.

Q. Suppose he didn't change it, what would happen?

A. He would have to take the wheat and pay for it.

Q. So that if the trade is made in the wheat pit and the customer does nothing more, delivery results, does it not?

A. It would be a cash delivery, yes sir.

Q. What? A. Yes sir.

Q. That is true of every trade made in the wheat pit, isn't it? A. No sir.

Q. Isn't it true of every trade made in the wheat pit, and if nothing more is done—

A. Not of more than one per cent of the trades in the wheat pit.

Q. Isn't it true of every trade in the wheat pit that if nothing more is done delivery will untimately follow?

A. It cannot be true because they never put in their trade that way, of the trades in the wheat pit, there wouldn't be money enough to pay for them.

Q. Isn't it true, in any trade you ever made in the wheat pit, if nothing more was done and the last day of the month arrived for delivery, the property would be delivered?

A. No sir, because nine-tenths of the time they change it over.

Q. Assuming that they didn't change it over, isn't it true of every trade you have ever made in the wheat pit that if nothing is done before the last day of the month delivery must follow?

A. Not to me, because I never take any trades then.

Q. You never took any trades at that time? A. No sir.

Q. You never allowed your trade to reach the delivery point?

A. If I had a customer that would take it in and pay for it.

653 Q. Suppose that your customer bought and sold and the parties of whom he bought or sold were unwilling to join in one of these rings, what would happen?

A. It would stay on the books.

Q. What would happen on the last day of the month for delivery?

A. I would deliver the wheat then if the party delivered it to me; I would ring it out for the last day of the month.

Q. Suppose you couldn't get the parties to consent to ringing it up, then what would happen?

A. That would be impossible because they all will consent to a ring, because they don't want to get the cash stuff.

Q. The trades in the wheat pit are rung up then?

A. As I said, there is only about one per cent that is ever delivered, probably less than that.

Q. What is there when the trade is made in the wheat pit that enables you to tell whether that trade is to be settled by ringing or to be settled by delivering? Now that question applies to what takes place in the wheat pit at the time the trade is made, to enable you to tell that?

A. In my own business, in my own trade for the house or somebody else's?

Q. Generally? A. As a general thing?

Q. Yes?

A. The trades would be rung up and settled and not delivered. They never expect delivery.

Mr. Robbins: I move to strike out the answer.

(Question and answer read.)

The Master: That may be stricken out. Now, answer the question if you recall it. If not, it will be repeated.

A. My answer to that question is, from my own experience and by the experience I have had with houses I have traded for, that it is generally the intention on the Board that
654 all trades will be rung up in place of being delivered.

Mr. Robbins: I move to strike out the answer.
Mr. Jenks: I object to striking it out.
The Master: That answer is not responsive. It may be stricken out.

Mr. Robbins: Now, read the question over to the witness again. I wish this record would show how many times this question is asked read.

(Question read.)

A. My answer is by my own experience.

The Master: Please answer: Is there anything that happens what you see or hear in the wheat pit which enables you to tell?

A. No sir, there is nothing that would tell me that.

Mr. Robbins: Q. Well, is the system of trading there in the wheat pit—by that I mean what takes place in the general course of dealing in the wheat pit, is there anything occurs to enable you to tell whether trades that are there made will be settled subsequently by deliveries or by ringing?

A. There is nothing to tell, of course we cannot tell what other people are going to do.

Q. The trades are made in such a way that there is nothing to indicate in any of those trades whether that trade is to be delivered or settled, is there?

A. Only as I said, the trades are made with the understanding that they are not to be delivered; of course they settle them up.

Mr. Robbins: Read the question.

(Question read.)

The Master: I think you have answered in that way
655 sufficiently, Mr Witness. He is asking you if there is anything visible or tangible that you see or hear, as I understand it? A. No sir.

Mr. Robbins: Now that other answer goes out.
The Master: Yes.
Mr. Jenks: I object to its going out.
The Master: It is not responsive. He has answered that way at least a dozen times.

Mr. Jenks: The question will remain there, I suppose and be written up. I object to its going out. Let the Court settle that.

The Master: Very well.

Mr. Robbins: Now read the question and the answer.

(Question and answer read.)

Mr. Robbins: Q. What is there that occurs in these pits at the times when transactions are made that enables one to distinguish between the trades that are made for the purposes of hedging and those that are not? A. Nothing.

Q. If Mr. Armour had a million bushels of wheat in his elevator that he desired to deliver out in December and should send his brokers into the wheat pit to sell it for December delivery, what is there occurring in the wheat pit to distinguish transactions of that character from any other transactions made in that pit?

A. Nothing. I apologise to the Master.

Mr. Robbins: You left the chair to speak to Mr. Jenks?

A. Yes sir.

Mr. Jenks: What did Mr. Jenks say?

A. "Never mind, sit down."

Mr. Robbins: What did you tell Mr. Jenks? A. I
656 object.

Mr. Jenks: That is none of your affair.

Mr. Robbins: He objects Judge.

Q. How did you come to leave Bartlett Frazier & Company?

A. The company had no further use for my services.

Q. In other words they discharged you, did they not?

A. Yes sir.

Q. Did you make, while with Bartlett Frazier & Company, did you make any of these hedging transactions? A. No sir.

Q. Didn't sell in the wheat pit for them at all did you?

A. Yes, sir.

Q. Didn't sell in the wheat pit on any trades that they made for hedging purposes? A. No sir.

Q. Nor any trades upon which there were deliveries?

A. No sir.

Q. What was the business of Bartlett Frazier & Co. during the time you were with them?

A. Commission and receiving house.

Q. Were they owners of large elevators?

A. I believe they were at that time, yes sir.

Q. And about what was the capacity of their elevators at the time you were with them?

A. I know nothing about that, sir. I know nothing about their cash business.

Q. Did they carry large amounts of grain at that time?

A. I don't know, sir.

Q. What was specifically the period that you were with Bartlett Frazier & Company? A. Two years.

Q. Between what times?

A. I think it was '96 to '98; I don't recall. It may have been '95 to '97.

Q. Did you make all the sales, all the transactions in the wheat pit for them while you were there, were you their regular man in the wheat pit? A. There were others.

Q. They had more than one man in the wheat pit?

A. Yes sir.

657 Redirect Examination

By Mr. Jenks:

Q. Mr. Hough, what is the largest amount of wheat that you know of that was traded in at the pits in one day?

A. That I know of personally?

Q. Yes, that you know personally and that you observed there at the wheat pit, the largest amount in one day?

Mr. Robbins: That is not re-direct.

Mr. Jenks: About? Yes it is.

Mr. Robbins: The volume of business was not asked him at all.

The Master: Well, answer it.

A. I should say about fifty millions.

Mr. Jenks: The largest amount? A. That I know of, yes sir.

Q. If you stood there at the pit and in one day saw fifty millions of wheat traded in and you knew that that was more than there was in the Chicago market at the time, would that be any indication to you that the parties who were trading there at the pit did not intend to receive or deliver the commodity that they traded in? A. Yes sir.

Mr. Robbins: That is objected to.

The Master: I think that is objectionable.

Mr. Jenks: He asked if there was any other way he knows it.

The Master: You can ask him if there is any other way, but you are assuming he knew there were not fifty millions delivered, and there is no such showing as that.

Mr. Robbins: The conclusion can be drawn by the Court.

Mr. Jenks: Suppose I prove by another witness that there wasn't any fifty millions here?

The Master: Well, confine him to the day and date, what this witness knew at that day and date; possibly that
658 would be competent then.

Mr. Jenks: I have asked the question and he has answered.

The Master: The objection is sustained to the question.

Mr. Robbins: The question is out.

Mr. Jenks: Q. You were asked by Mr. Robbins what would be done if there was a complete ringing made of transactions on the Board and one man in the ring refused to settle by that ring, if then there would not be a delivery of the commodity,—one man refusing to settle would cause the commodity to be delivered. Do you know how commodities, for several years past, have been delivered on the Board of Trade, I mean in what manner? A. Shall I answer that?

The Master: Answer.

Mr. Jenks: Whether you know? A. I know.

Q. How are commodities delivered and how have they been or several years on the Board of Trade?

Mr. Robbins: That I object to as not re-direct examination.

The Master: Overruled. Answer.

Mr. Robbins: And also I make the objection that the question is covered by the rule that it is not the best evidence.

A. Do I know how they are delivered?

Mr. Jenks: Q. No, how are they?

Mr. Robbins: He has already testified he had nothing to do with deliveries.

A. They are delivered on the floor of the Board by notices now in place of the warehouse receipts as they used to be.

659 Mr. Jenks: Q. And that notice starts with whom?

A. The party that has the trade in the wheat, and he delivers it to the party it is sold to.

Q. Now, we will suppose that a party is in this ring, that one of the men in the ring refuses to settle by the ring, and suppose one man, who has the commodity, starts out the notices and it gets clear around and lands with the party who send out the notice, you have got a complete ring there; it lands with the party who sends out the notice. Is any delivery made at all there, and if there is, who pays for the commodity?

A. If it [sayd] "delivery," it is the last one who gets it.

Q. Suppose that is the one who starts it, in the case you have got, is where there is a complete ring and the man who has got the stuff starts the notice and the notice comes around to him, has any delivery been made at all and does anybody pay for that wheat? A. No sir.

Q. Now, Mr. Robbins asked you what would be done in case a man had bought wheat for future delivery. I will say that he has bought it for delivery in December, and no ringing up of that trade is made at all. Mr. Robbins wanted to know if that would not result in the delivery of the commodity.

A. Not always.

Q. I will ask you whether, in just such a case as that, the man has bought December wheat, it is not a practice on the Board of Trade for him to change that option to another one?

A. Yes sir.

Q. And by what means is that change accomplished?

660 A. If he is long on wheat he sells his December wheat and buys some other option; if he is short he sells it short and sells some other option.

Q. And when he buys it in or sells it out, as a rule there on the Board, how is the transaction settled?

A. He settles it—so far as the system is concerned, it is settled through the Clearing House and rung up and it is paid for in case of any cash delivery.

Q. What is paid? A. The difference between the prices.

Recross Examination

By Mr. Robbins:

Q. At what day do you refer to—to what day do you refer when you speak of an aggregate trading of fifty million bushels?

A. The year 1892 when I was trading for Schwartz & Dupee; we had a large foreign account.

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Q. Was it pretty active market on that day? A. Very active.

Q. How many persons were there in the wheat pit?

A. It was crowded. You couldn't get any more in.

Q. About how many? A I think there was 250.

Q. And where did you stand in referance to the 250?

A. Stood on the north side of the pit, at the top.

Q. On the north edge of the pit? A. On the north end, yes sir.

Q. Were you trading at that time yourself?

A. I was trading for Schwartz & Dupee.

Q. You had a good many trades to make for them?

A. Yes sir.

Q. Was it pretty noisy? A. It was not quiet.

Q. It was not quiet? A. No sir.

Q. It is a pretty noisy place when the pit is active, is it not?

A. Very.

661 Q. Everybody shouting at once? A. Trying to.

Q. Well, what steps did you take that day to ascertain the volume of the trades?

A. The amount I traded in myself and the amount other people told me they traded in.

Q. Did you ask the 250 members how much they traded in that day? A. No sir.

Q. How many of them did you ask?

A. I had only to ask very few to get twenty five millions.

Q. How many did you ask?

A. I don't think I had to ask but two.

Q. You asked two? A. Yes sir.

Q. And those are the steps you took to ascertain the volume of trade that day?

A. Yes, on account of the amounts that I was trading in.

Q. What?

A. On account of the amount I was trading in too.

Q. Did you talk to the persons to whom you sold or to the persons of whom you bought?

A. I talked to one person in particular that I had sold wheat to.

Q. Now, in ascertaining the volume of that trade, did you count his trade as well as your own? A. Yes sir.

Q. You counted the purchase and the sale, did you?

A. I counted what he told me he had done, what he traded in.

Q. Well, for every seller that day there was a buyer, was there not?

A. Yes, I think there was more than one buyer for every seller.

Q. Well, for every bushel sold that day there was a bushel bought? A. Why of course, or we couldn't trade.

Q. And the aggregate you take is by taking the amount you traded in and the amount two other members of the Board of Trade traded in and putting them together? A. Yes sir.

Q. And from that you concluded there must have
662 been fifty million bushels traded in? A. Yes sir.

Q. And that is all you did to ascertain the trading on that day? A. Yes sir.

Charles K. Nims a witness called on behalf of the defendant having been first duly sworn, was examined in chief by Mr. Jenks and testified as follows:

Q. Will you state your full name?

A. My name is Charles K. Nims.

Q. Where do you live? A. I live at 3300 Vernon Avenue.

Q. How long have you lived in Chicago? A. Since 1876.

Q. What has been your business? A. Board of Trade.

Q. Are you a member of the Board of Trade of the City of Chicago? A. Yes sir.

Q. How long have you been?

A. Oh, I think about ten years.

Q. What kind of business have you conducted on the Board of Trade?

A. I have simply solicited business and turned it into the houses that I represented and got my rebate at the end of the month.

Q. What do you mean by rebate?

A. Half the commission.

Q. Have you ever bought and sold commodities at the pits yourself?

A. Very little of that. I first started to do so but I found that the checking beat me, so I got stuck two or three times on that so I told the party that represented the house—I deal through him now and have nothing to do with trading in the pit.

Q. How frequently have you been on the floor of the Exchange at any time in the past ten years?

A. Oh, every day, you might say.

Q. How frequently have you observed the manner of doing business at the pits in the past ten years?

A. Please state that again?

(Question read.)

A. I have observed it every day.

663 Q. How long since you were at the pit on the floor of the Exchange room? A. Well, three or four days.

Q. Your business has been principally that of soliciting trade in the past ten years? A. Yes sir.

Q. From whom have you solicited trade?

A. You mean the names of my customers?

Q. No, who are they, not their names—generally who are they?

A. They are men outside the Board of Trade, customers.

Q. Residents of Chicago or other places?

A. Residents of Chicago. I have very little to do outside.

Q. Are those members from whom you solicit business generally members of the Board of Trade or non-members?

Mr. Robbins: Wait.

A. Non-members.

Mr. Jenks: Q. What is the class of business done by the houses whom you turn over the business that you have solicited from your customers to?

A. I give them an order to buy or sell wheat—

Q. That is not what I want to know. I want to know the general business of those houses, I mean by that whether they are engaged in the commission business?

A. Engaged in the commission business trading in different commodities on the Board of Trade.

Q. And with how many different houses have you dealt in turning over the business of customers to them?

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A. Oh, I have represented great many houses, I couldn't tell you how many in ten years. I have represented possibly 25, maybe more.

664 Q. Different houses? A. Different houses.

Q. And those different houses, state whether they were all members of the Board of Trade?

A. They were all members of the Board of Trade, the houses I traded with.

Q. And doing business on the Board? A. Yes sir.

Q. Now, when you would get an order from a customer, what was done with that order so far as the house that you represented was concerned?

A. They bought the wheat or sold it as the case might be and would tell my customer the price that they bought or sold it at.

Q. How many different customers in the past ten years, to make an estimate of it do you think you have had whose business you have turned over to the Board of Trade?

A. I couldn't state; I don't know. I have had a great many.

Q. I mean, whether it is a large number of customers or a small number? A. A large number of customers.

Q. With reference to their dealings on the Board through the houses that you represented, were those dealings large or small?

A. Some were small and some were large.

Q. Have you any way of telling what year the largest business was done on the Board of Trade for customers of yours?

A. One very large year, perhaps not the largest, but a very large year was 1895.

Q. 1895? A. Yes sir.

Q. Now let us take 1895. During that year, with what different houses on the Board of Trade were you doing business?

A. I was doing business with C. B. Eggleston & Company and with John Broughton and E. S. Van Vliet and Heth & Son and with Wrenn—

Q. Wrenn?

A. Walker, Wrenn & Co. I don't know as I can remember them all.

665 Q. In doing that business for the customers you were able to obtain, state how the business was transacted so far as the Board of Trade house was concerned, commencing with the initial or first transaction?

A. I don't understand the question.

Q. Commence with the first transaction for the customer and follow that through until the end of it and tell us how it was all done with one customer?

A. I went to the house I represented and told them to buy some September wheat; at that time I opened a September wheat option, in that year; if I recollect it was 60⅜; I bid the market up from 60 to 60⅜ and got possibly half a million stuff.

Q. Commence with one transaction and follow that through and state how that was done?

A. Well, as I say, I bought wheat with this house, say Walker, Wrenn & Co., bought a couple of hundred thousand wheat for September delivery at 60⅜ and kept it and sold it out at a profit, a large profit. I cannot describe it in any other way.

Q. How was it sold out, or how closed out?

A. Well, it was bought in the pit at 60⅜ and sold out I cannot remember the price, in the pit.

Q. Well, how was it closed and how was the money obtained.

A. Well, it was sold out and collected, I suppose, from people that they had who bought it.

Q. Were there any deliveries? A. No sir.

Q. Now, how was it closed out, how could you make the closing? A. I don't know what you mean.

Q. State whether it was by ringing up the deals.

A. Mr. Jenks, I don't know anything about ringing up the deals. That part of it I have nothing to do with, and I
666 don't know anything about it, from one end to the other and I couldn't state.

Q. State whether any of these customers in the beginning of their transactions had told you that they did not want any of the commodities, that they merely wanted the profit that was in it?

A. Well, there wasn't anything said in reference to that matter.

Q. Did any of them receive and pay for any of the stuff that was bought on their order? A. They did not.

Q. Did any one of them deliver any of the stuff that was sold on their order? A. No sir.

Q. Since you have been a member of the Board of Trade, have you observed so as to make an estimate of the amount of stuff actually delivered and paid for compared with the amount of stuff that was not delivered and is not paid for?

A. I couldn't state as to that. There is a very small part of the business that I have done that has ever been delivered, ever been taken and paid for.

Q. And of the business that has ever been done there from your solicitation, has anything ever been delivered or paid for?

A. Yes sir, at different times.

Q. What proportion of the amount dealt in has been delivered and paid for in your business? own

A. I don't think I could state.

Q. Can you make an estimate of it?

A. I don't think I can; I couldn't make an estimate of it. I have had very little ever delivered.

Q. Very little ever delivered? A. Yes sir.

Q. Have they been large transactions altogether?

A. Very large at times.

Q. You may state how much per day, week month or year?

A. Well, at that time I had for customers about two 667 million bushels of stuff, the time that I speak of in '95.

Q. Now, in that two millions of stuff that was traded in, that was all traded in at the Board of Trade, was it?

A. Yes sir.

Q. In that two millions of stuff, how much was delivered?

A. None; it was sold out.

Q. How much was paid for? A. None.

Q Since that time, take it year to year, you have been in from the same business and doing more or less or it? A. Yes sir.

Q. Has the busines been large or mall?

A. Latterly it has been small.

Q. Amounting to how much per day or week or year?

A. I couldn't exactly state that, but it has been very small in comparison with what I did at that time.

Q. Well, last year how was it, during the year 1900, was the business small or large?

A. The business was small, my business.

Q. Can you make an estimate of how much, in the aggregate, was one in 1900?

A. I should say—I cannot make an estimate, no Mr. Jenks, I don't know.

Q. Did you deal in 5,000 bushels or five millions?

A. Oh, I dealt in hundreds of thousands of stuff, I don't know how much.

Q. And in that hundreds of thousands that was dealt in in 1900, how much of that was delivered? A. None.

Q. The year before that, was the business done by you or for you or for your customers large or small? A. Fairly large.

Q. Amounting to how much would you say?

A. I cannot say, hundreds of thousands of stuff.

Q. And in that lot, in 1899, how much was delivered?

A. My stuff was sold out before the option matured. There wasn't any delivery connected with it.

668 Q. No delivery at all? A. No sir.

Q. Now take the year before that, was your business large or small? A. I could answer just the same.

Q. Was there anything delivered there to you. A. No sir.

Q And the year before that, was the business large or small?

A. The same, no delivery.

Q. And the year before that was the business large or small?

A. You might go back until I did have some, I cannot remember the time.

Q. How far would you have to go to find the year where there was some delivered?

A. I testified that in 18—I had a good deal of business.

Q. 1895 was it? A. Yes sir.

Q. Now, that year, was there anything delivered? A. No sir.

Q. Now, have you in mind any year when you did business there when anything was delivered?

A. I cannot recall. I know I have had at times, taken in some stuff and paid for it, but as I say, it may have been in the ten years I have been a member of the Board, possibly not over five times have I taken in stuff and paid for it. I think that will average it.

Q. Now, those five times that you have taken in and paid for anything, would be what proportion of the transactions that you had there? A. I couldn't tell you.

Q. Would they be one-tenth of one per cent of the transactions? A. Well, I will say half of one per cent.

Q. Half of one per cent. But the most of the years you have dealt there there was nothing delivered at all? A. No sir.

Q. Well, do you mean that there was nothing delivered?

A. There was nothing delivered, no sir.

Q. Now, in that business that you did for the members of the Board of Trade, for your customers or those that you

669 were able to get business from, you divided the commissions with the Board of Trade houses, did you. A. Yes sir.

Q. Can you state in that way, from the amount of commissions that you got, about how large your transactions were from year to year?

A. Mr. Jenks, that would be hard work. I couldn't do that; I don't know. I couldn't remember that because I have had some very good years and some very poor years. I can't recollect.

Q. Did you have some customers that you knew that did not want to take or pay for the stuff that was bought on their account?

A. They never have said what they wanted, but their action shows itself, the fact that they did not take it, that they did not want it.

Q. That was known also to the Board of Trade houses that did the business, wasn't it?

A. They did the business; of course they knew.

Mr. Robbins: Knew what?

A. They did the business; they knew.

Mr. Jenks: Q. Whether the customers wanted to receive and pay for the stuff or not, the business was done by the Board of Trade house on the floor of the Exchange room in just the same way wasn't it? A. Yes sir.

Q. You don't know anything about the ringing up of deals?

A. No sir, I don't know anything about it, never had anything to do with it.

Q. Do you know anything about the Board of Trade Clearing House?

A. No sir, I don't; with that part of the business I am not at all conversant with; I simply solicited trade on the outside, took it to the house and divided the commission; otherwise, as to the modus operandi of the business, I know nothing about it.

670 Q. Do you know anything about the settlement clerks employed by the Board of Trade houses?

A. No sir.

Q. Do you know anything about the amount, in volume of commodities traded in on the Board of Trade by everybody there from year to year or by the month or day?

A. You might as well talk about the sand in the sea. I don't know anything about it.

Q. You know this, do you not, comparing it with the sands of the sea shore, that the total volume of the business done up there is very large—

Mr. Robbins: I object to that. The witness says he does not know anything about it.

The Master: Objection sustained.

Mr. Jenks: Q. Do you know whether it is very large?

A. At times it is very large.

Q. Can you state the amount of business done on the Board of Trade by any one house, members of the Board?

Mr. Robbins: I make the same objection.

Mr. Jenks: For any period of time? There cannot be any objection to his answering yes or no, and if he don't know, there won't be anything else, and if he does there will be another question.

Mr. Robbins: All right.

(Question read.)

Cross Examination

By Mr. Robbins:

Q. You came up here by subpoena or at the request of the defendant? A. I came here at the request of the—

Q. Who? A. Mr. Jenks.

Q. The request of Mr. Jenks?

A. Yes sir, on their say-so that if I didn't come I would be subpoenaed and I simply avoided that technicality.

671 Q. When you gave orders to those different houses to make these trades for your customers, they went upon the floor of the Exchange and made the trades and reported them back to you, did they not?

A. They were at the time on the floor and I simply told the party what to do and he did it and gave me the amount and price.

Q. And he made trades there with other members of the Board? A. Yes sir.

Q. Now, you don't know anything about the amount of deliveries that were made upon those contracts between the members of the Board do you?

A. I know that my trades there have been—were not delivered.

Q. You know that as between yourself and your customers there was no delivery? A. Yes sir.

Q. But it does not follow, that there were no deliveries between the members of the Board, does it, because your customer closed his trade without a delivery to him?

A. I couldn't state; I don't know how that is, I only know what had I to do with it.

Q. Now, let us see. You gave an order to buy, and then about the time of delivery you gave an order to sell the same stuff? A. Yes sir.

Q. And your commission house or broker would render the statement to you when that transaction was closed between you, wouldn't it?

A. I would tell them myself; I would give them the orders to close.

Q. When there was a sale and counter trade, that would close the sale as between yourself and your commission house?

A. Yes sir.

Q. But it did not necessarily close the transactions as
672 between the two members of the Board of Trade, did it?

A. Not necessarily.

Q. Would those trades remain open until the last day of delivery as between the two members? A. I suppose so.

Q. The actual deliveries might be made by your broker or commission man to the other, or by the other to him, on the trades made for you?

A. I don't understand that. I don't know. All I know is what I have had absolutely to do with the transactions. I gave my orders and they were transacted in the pit and that is all I knew of them.

Q. You don't know anything about it except as between your customer— A. That's all.

Q. —and your broker? A. That's all.

Q. And for aught you know there might be many deliveries on the trades that the Board of Trade members made for you with the other members of the Board of Trade?

A. It is possible.

Q. And as to that you know nothing? A. No sir.

Q. All these trades that you made, ordered made upon the floor, were made under the rules of the Board of Trade, were they not? A. Yes sir, with the best houses.

Q. And your customers understood, did they not, that the trades were made under the rules and regulations of the Board of Trade? A. They did.

Q. Did you say anything to these Board of Trade houses that you gave your orders to, at the time you gave the orders, or intimate to them whether or not there was to be deliveries on these trades? A. No sir.

Q. You simply gave the order? A. Simply gave the order.

Q. And they didn't know at the time they received the trades whether you delivered or not, did they?

A. No sir.

673 Q. And that is true of all your business with these different Board of Trade houses? A. Yes sir.

Q. They simply buy or sell for future delivery, and they execute the order? A. Yes sir.

Q. And they knew nothing about your intentions or the intentions of your customers as to the delivery?

A. I don't know anything about their intention naturally.

Q. How?

A. I say, I didn't know anything about their intention, except I wanted to buy it or sell it.

Q. They knew nothing about your intention? A. No sir.

Q. That is to say, your intention or the intention of your customer were not communicated by you to the Board of Trade house that made the trade for you on the floor? A. No sir.

Q. And that is true of all your business? A. Yes sir.

Q. You said you had seen these pits and the trading in them. Is there anything in the way the trades are made in the pits, anything that happens at the time that the trades are made in the pits to enable anyone to tell whether a particular trade is one that will be completed by delivery, or will be closed out by a counter trade before the time of delivery arrives?

A. There is no way of ascertaining at the time.

Q. Is there any way in the manner in which these transactions are made in the pits, anything to tell anybody whether there will be, on that particular trade, an actual delivery or not? A. No sir.

Q. All the trades are made in the same way? A. Yes sir.

Q. Whether the parties that make them contemplate delivery, or contemplate hedging property in their hands, or contemplate pure speculation? A. Yes sir.

Q. Is there any way that the Board of Trade can as-
674 certain, as those trades are made in the pits, what ones the parties intend the deliveries on and what ones they intend to close by future contracts?

A. No sir, they cannot tell.

Q. What? A. They cannot tell.

Mr. Jenks: One minute, Mr. Nims.

Redirect Examination

By Mr. Jenks:

Q. If a broker who had executed an order for you had had the stuff delivered to him in that transaction, would you have known it? A. I don't understand the question.

(Question read.)

A. I don't think that is possible.

Q. You don't think it is possible that it could have been delivered to him without his telling you of it? A. No sir.

Q. Did any of them ever tell you that the stuff had been delivered? A. No sir, that they just bought for me?

Q. Yes? A. No sir.

Recross Examination

By Mr. Robbins:

Q. If you gave an order to buy, and then before the time to deliver arrives, gave an order to sell the same stuff through the same broker, and the broker treated the transaction as closed as between you and him what occasion would the broker have for telling you, if a delivery subsequently took place, as between himself and the other member of the Board of Trade?

A. Wouldn't have any.

Q. Wouldn't have any occasion for telling you?

A. No sir.

Q. So that you wouldn't know whether there were any deliveries as between the members of the Board of Trade in their transactions or not if they were closed out by you before the time for delivery arrived? A. No sir.

675 Re-redirect Examination

By Mr. Jenks:

Q. I will ask you another question. You were a dealer on the Board yourself and had some transactions there of your own? A. Yes sir.

Q. How numerous were those?

A. Trades that I made myself?

Q. Yes?

A. Well, I would very seldom make any; I couldn't find the party I wanted; there was times I couldn't find the broker and I was afraid the market would get away from me when I had an order to buy at a certain price and it was offered at that price in the pit, I would take it myself.

Q. In these transactions did you ever receive or pay for anything? A. No sir.

Q. Or did you ever deliver anything? A. Never did.

Re-recross Examination

By Mr. Robbins:

Q. In that class of trade you would put them right in to the broker and you would have him put them on his books and carry them through? A. Yes sir.

Q. You would never carry the trades in your own books or trade in your own name?

A. No sir, I never had any books and never traded in my own name.

Q. As soon as your broker turned up you would give him the trade to carry through for you?

A. Give him the trades for the different parties; as I said before, the reason I didn't do any trading myself was because of the fact, in checking the trades there would be mistakes and those mistakes I would have to stand for, and I said, "Here what is the use of my taking the risk" and I quit doing so.

676 James B. Heth, a witness called on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks and testified as follows:

Q. Will you state your full name? A. James B. Heth.

Q. Where do you live? A. 1314 Church Street, Evanston.

Q. How long have you lived in this County?

A. 15 years.

Q. What is your business?

A. Well, up until a few months ago I as a broker on the Board of Trade.

Q. A member of the Board? A. Yes sir.

Q. How long were you a member of the Board of Trade of the City of Chicago? A. 12 years I should say.

Q. Commencing when?

A. I joined the Board of Trade when I was 21 years of age, I was born in 1867, whenever that was.

Q. When did you cease to be a member of the Board of Trade? A. 8 of 9 weeks ago, sir.

Q. How did you cease to be a member?

A. I sold [by] Board of Trade ticket.

Q. You became a member about 1888?

A. Yes sir, I should think so.

Q. During the time that you were a member of the Board of Trade of the City of Chicago did you become familiar with the manner in which business is transacted on the floor of the Exchange room, and familiar with the manner in which trades there made were finally closed out?

A. I know nothing about the ring settlement, sir, I am familiar with the trading in the pit on the Board of Trade. That was my business.

Q. Were you there conducting your own business or were you conducting business for other people?

A. I was in business with my father, sir, for five or six years under the style of Heth & Son.

Q. What was the business of the firm called Heth & Son?

A. We were commission merchants.

677 Q. Where was the office of that firm?

A. At one time our office was in the Rialto Building, I forget the number, and afterwards 31 Traders Building.

Q. Both of those buildings are right close by the Board of Trade Building, are they not? A. They are, sir.

Q. In conducting the business of Heth & Son for customers, tell us where those customers were located as a rule?

A. I should say in the City of Chicago, sir, their homes.

Q. Were they all in the City of Chicago or did you have some country customers? A. There were very few, sir.

Q. In what manner were orders given by City customers to your firm to transact business?

A. If a man wanted to buy wheat, sir, he would tell me to buy twenty-five wheat, or whatever the amount might be.

Q. Would he come to your place of business?

A. Yes sir, generally, or outside; we received orders outside, and in our office and on the floor of the Board of Trade.

Q. In your office did you have a blackboard? A. No sir.

Q. In receiving orders from your customers how were those orders executed on the floor of the Exchange room?

A. Either myself or my father, who was living at that time, filled them.

Q. And you would fill them in what way?

A. By going to the wheat or grain pit, sir, and buy the commodity or sell it as the case might be.

Q. How extensive was your business?

A. We had a very fair business, sir.

Q. How extensive would be the purchases of commodities, say for a week, a month or a year?

A. Mr. Jenks, I could not tell you. At times they
678 were quite large; at times they were small sir.

Q. Have you been familiar with the business of any other Board of Trade house?

A. I have only worked for two Board of Trade houses. I worked for the firm of Brosseau & Company for a while, two, three or four months and then I worked for John Dickinson.

Q. How long did you work for John Dickinson & Company?

A. Two years and a half sir.

Q. What two years and a half?

A. I went to work for Mr. Dickinson the day Leiter failed or his trades were closed out.

Q. Joe Leiter? A. Yes sir; I remember it distinctly.

Q. That was about when? A. '98, wasn't it?

Q. '98, about '98. A. I think that was the year, yes sir.

Q. I guess it is three years ago, yes, about 1898. How long did you work for John Dickinson & Company?

A. I worked for him from that day until the 6th day of last February, when he was expelled from the Board of Trade.

Q. Were you familiar with the business of John Dickinson & Company?

A. I was familiar with the pit transactions of the John Dickinson Company. I was engaged by him as broker and I offered the majority of his trades in the wheat pit.

Q. Now, to get the dealings of your own firm Heth & Son, when you received an order from a customer, that order would be executed by going upon the floor of the Exchange room and executing the order at the pit? A. Yes sir.

Q. Were those dealings that you conducted for your own house dealings in future or in cash commodities?

A. Future, sir.

Q. In the dealings that you had in futures, how were those transactions closed out? A. Settled by rings, settled.

679 Q. Were any of the settled by actual delivery of the stuff? and payment for it?

A. None that I ever knew of, sir.

Q. And how many years did you do business on the floor of the Exchange room for the firm of Heth & Son?

A. Five or six years.

Q. Do you know in what manner the rings were made up through which the settlements were made?

A. That is a part of the business, sir. I knew nothing about. I know nothing sir, about making rings. I know there is such

a thing as the custom to settle Board of Trade transactions in in that way, but as to how it is done I do not know.

Q. Do you know anything about the Board of Trade Clearing House, how that is managed? A. I do not sir.

Q. What were the commodities usually dealt in on the floor of the Exchange room by the firm of Heth & Son?

A. Wheat, corn and oats; we had a little provision business.

Q. What was the largest of the three, wheat corn or oats?

A. Wheat.

Q. Take the transactions in wheat that your firm had there on the Board, can you give us an estimate of the largest day's transactions in wheat?

A. We traded in a million and a half and two million a day, sir, in one day.

Q. And covering what period of time would your trade be as large as that or nearly as large as that?

A. That was a big day for us.

Mr. Jenks: A million or a million and a half?

A. Yes sir.

Q. What was a small day for you?

A. Some days we would not have seventy five.

Q. Seventy five what?

A. Thousand bushels of wheat or corn.

Q. Now, covering the time that you were doing business there as the firm of Heth & Son, what would you say would be an average of your daily business in wheat?

680 A. You mean my own individual trading and that of my father?

Q. Or your firm, yes?

A. We traded—certainly an average would be a quarter of a million, 250 thousand bushels of stuff.

Q. In wheat? A. Yes sir.

Q. What would it be in oats? A. Very small, sir.

Q. Or corn? A. Very small, sir.

Q. And in that trading, covering the period of five years in wheat you never received or delivered anything?

A. I don't believe we ever paid for one cash wheat, sir.

Q. And if you didn't pay for it you didn't receive it?

A. Not to my knowledge.

Q. In doing your business there for the firm of Heth & Son and receiving orders from your customers, was there any such thing known as stop orders? A, Certainly, sir.

Q. What does stop order mean on the Board of Trade?

A. Well, sir, if you should tell me to buy ten wheat for you at seventy cents and sell it out if it went to 69, and I understand you mean to limit your loss to that, when wheat struck 69 I would sell it to the best of my ability.

Q. Are stop orders frequent in your business?
A. Stop orders are very frequent.
Q. And if you received an order of that kind, an order to purchase with a stop limit, would that be executed on the Board of Trade just the same as any other order that you had?
A. Yes sir.
Q. If I gave you an order to buy ten of wheat at 70 and stop the loss as 69, would that be an indication to you that I did not want the wheat delivered to me?

681 Mr. Robbins: I object to that.

The Master: That is incompetent, I think to show intention. It is pretty hard to know what is in a man's mind.

Mr. Jenks: Q. In the usual course of business on the Board of Trade, if a customer purchases commodities there and orders the loss stopped at a certain figure, are those transactions closed out when the market reaches that figure without further orders?
A. If a man gave me a stop order to stop wheat at a certain figure, I would stop it at that figure, sir. I would consider that was what he wanted done.
Q. Did you ever know of a delivery being made on a stop order? A. I don't understand the question.
Q. Did you ever know of a delivery being made to a customer who had ordered a purchase of wheat and had also ordered that the loss be stopped at a certain figure?
A. I don't understand what you mean.

(Question read.)

A. I would close the transactions if it was stopped.
Q. That is not quite the question. I think if you would read the question you would understand it.

(Question read.)

A. I would close the transactions so far as the question was concerned, Mr. Jenks.
Q. You still do not understand the question, which is this: Where a man orders a purchase of wheat and also orders that the loss be stopped at a certain figure, whether that loss is stopped by sale or not, did you ever know a customer on such an order as that, to receive the actual wheat and pay for it?
682 A. The only way I can answer that is, we had a great many stop orders when we were doing business and received no wheat.
Q. How extensive was the business of John Dickinson & Company while you were connected with that house?
A. They did a large business.
Q. In what commodities did that firm deal on the Board?

A. Wheat, corn, oats, lard, provisions.
Q. Which of those was the largest that they dealt in?
A. I would say in the wheat, sir; I should say that wheat was the largest.
Q. What would their transactions in wheat on the floor amount to, per day, month or year?
A. I couldn't tell you that sir, but they were large.
Q. Well, what do you mean by large? Can you give me some estimate of what they did amount to?
A. Oh, they traded in a great many million bushels, Mr. Jenks, I cannot tell how much.
Q. Out of that great many million bushels that they dealt in there, what proportion resulted in deliveries of the actual stuff?

Mr. Robbins: I object to that. It is not shown that this witness had anything to do with deliveries. He was the floor man.

Mr. Jenks: Q. Do you know what amount of deliveries were made on these transactions amounting to a great many million bushels? A. They were very small.

Mr. Robbins: Wait a minute. I move to strike that out.

Mr. Jenks: The question is, do you know or can you form any estimate of the deliveries in proportion to the great many millions of bushels dealt in?

The Master: You can answer that by yes or no.

Mr. Robbins: I want to know whether that question is out or not?

683 The Master: The first one is out.
Mr. Jenks: Read the question.

(Question read.)

Mr. Robbins: I object to that because that calls for this witness's opinion or estimate. It appears already in the evidence this man had nothing to do with the Dickinson Company except on the floor of the Exchange, to make trades in the wheat pit. As to the office work or deliveries, it is not shown he had anything to do with it and for that reason is not competent to express an opinion.
The Master: He may answer that question.

(Question read.)

Mr. Robbins: That calls for an answer, Yes or No.
The Master: That is what it calls for.

A. Do you mean as to the deliveries or as to the amount of wheat Dickinson & Company traded in during the time I was with them?

Mr. Jenks: I mean by that—what I want is the amount of wheat that they traded in and the proportion that resulted in actual delivery and payment for the stuff?

A. We traded in—

The Master: Wait a minute, the question is, do you know?

A. Yes, I do.

Mr. Robbins: Know what?

A. I know that we traded in millions of bushels of wheat and that very little cash wheat was ever delivered to him.

Mr. Jenks: Q. What proportion would you say of the amount traded in resulted in actual delivery and payment for it?

Mr. Robbins: I make the same objection, that the witness is not shown to know. It is not sufficient for the witness to say he has got an opinion.

684 The Master: I understand, but of course he has qualified himself somewhat.

Mr. Robbins: If you asked the witness if he has got an opinion and he would say Yes, still before you allow the opinion to come in you have got to show he is competent to form an opinion, otherwise you are putting a witness on to make guesses on it.

The Master: I think he has qualified himself.

Mr. Jenks: Read the question. (Question read.)

A. I don't see how you can estimate that; very small.

Mr. Jenks: Q. How small?

A. Not five thousand bushels in five or ten million.

Q. Have you seen Dickinson & Company's books?

A. I have seen Dickinson & Company's option books, yes sir.

Q. Do those option books show how trades were closed up?

A. The option book simply show, Mr. Jenks, on one page the amount of wheat bought and the other page sold. The ring books show that, so far as I know, how settlements are made.

Q. Have you seen Dickinson & Company's ring book?

A. I have seen it but I know nothing about it. There is nothing on there in regard to settlements.

Q. Have you been familiar in the past ten years with other Board of Trade houses that did business on the floor of the Exchange room?

A. I have known them. I am not familiar with how they do their business, but it is all done in the same manner.

The Master: The last part may be stricken out.

Mr. Jenks: I object to that.

The Master: "It is all done in the same way" may be stricken out.

685 Mr. Jenks: Q. Do you know anything about hedging deals on the Board of Trade? A. No sir

Q. Do you know anything about the manner in which business is conducted on the floor of the Exchange room of the Board of Trade, which I have not asked you about?

A. I have been there as a broker to buy and sell wheat for myself when I was in business as a commission man, and as a broker for these two firms I have mentioned. That is all I am familiar with.

Q. You don't know anything about settling otherwise?

A. I never settled, sir, and I am not familiar with it.

Q. In the deals that you had for your own house for customers on the Board, was there anything about commissions or margins?

A. Certainly I charge them commissions, and if they lost money they certainly required margins.

Q. Do you know how your own house settled up with your customers? A. With the customers?

Q. Yes.

A. If they made money I paid it to them; if it was a loss, why they paid it to me.

Q. Now, if the customer made money, how did he make it?

A. He bought wheat and it went up and it was sold out and he made money; if he sold it and it went down and he bought it in, he made money.

Q. And if he lost money, how would he do that, I mean, out of what would the loss grow?

A. The loss would grow out of his paying more for the wheat than he sold it for and selling cheaper than he bought it at.

Q. And both the profit and the loss would be the difference between the market value of the stuff at the time?

A. The market fluctuates every day; that would be the difference; yes.

686 Q. Then, in settling with your own customers, suppose they had made a profit, what amount would you pay them? A. Whatever profit that made them.

Q. Would you deduct anything from the difference in the market price? A. Deduct their commission.

Q. They did not have any revenue stamp at that time, did the? A. Not when I was in the business, no sir, for myself.

Q. Do you know what kind of business was done at the pits on the floor, whether the deals there were for futures or for cash?

A. If you buy wheat for May, that is a future. If you—

Q. You don't understand the question. I limit the question to the pits?

A. That is what I am answering. You buy wheat for May, which is the largest option traded in now, deliverable in May; when you want cash wheat and you make the trade in the pit, my understanding is that you so specify, cash wheat.

Q. Is any cash wheat dealt in at the pits, or are all the deals there for future options?

A. I myself have never made a trade, to my remembrance, of cash wheat in the pit, but I think if you would go in the wheat pit and specify, so state it, as cash wheat, that trades are made in the pit that way.

Q. Did you ever know anybody to buy cash wheat in the pit?

A. I am not familiar with the cash business, Mr. Jenks, and my business was entirely in futures.

Q. You never knew anybody to buy cash wheat at the pit, did you?

Mr. Robbins: He has not said that.

Mr. Jenks: I guess he knows that.

A. I never saw any one buy cash wheat.

Q. What do you mean and what is meant [bu] cash wheat on the Board of Trade?

A. Today I go into the wheat pit in Chicago and buy
687 twenty-five December wheat, I have until the 31st day to sell it—I have until the 31st day of December to deliver it; if I sell cash wheat my understanding is it has to be delivered to-day, and the bulk of the trading in the wheat pit is in futures, in all cases.

Cross Examination

By Mr. Robbins:

Q. How about a trade to seller the month, there are some of those made in the wheat pit, are there not?

A. I have never made one.

Q. Haven't you known of others making seller-the-month trades in the wheat pit?

A. I know there is such a thing as that, but I never made a trade in it, and I don't know what seller-the-month is sir, since I have been there.

Q. Well, taking the present time as an illustration, you have known of "seller November" during November, have you not, trades of that character being made in the wheat pit?

A. That is, trading in November wheat in the wheat pit now?

Q. And there would be to-day, would there not?

A. November wheat in the wheat pit?

Q. Yes?

A. Yes, there is November wheat traded in in the wheat pit to-day.

Q. If wheat is sold in the wheat pit in November for November delivery, that means the seller can deliver at once, does it not?

A. If I sold it to you I have the option to deliver it to you at any time during November. That is my understanding.

Q. So that, so far as the seller is concerned, there isn't any difference between "sell-the-month" and cash is there? I mean by "sell-in-the-month," seller November, there isn't to day any difference between seller November and cash wheat, so far as the sale is concerned?

688 A. There is a difference. Seller-in-the-month and cash wheat must be delivered that day, but if you sell November wheat you have until the 30th day of November to deliver it.

Q. So far as the seller is concerned, so far as his rights in the matter are concerned, there isn't any difference between selling cash and seller-in-the-month?

A. So far as the seller is concerned I should say not, but you as the buyer can demand the cash from him today.

Q. And you have known, of course of numbers of trades in November during the month of November in the wheat pit?

A. Not in this month but I have seen many current month's options traded in.

Q. They do trade in the current month?

A. They do, sir.

Q. In the wheat pit? A. They do, yes sir.

Q. They have during the time you have traded there?

A. They did, yes sir.

Q. And sometimes in very large quantities?

A. Large?

Q. What? A. Yes sir.

Q. During the time you were trading in the wheat pit, was there anything in the manner in which these transactions were made to enable anybody seeing them made to tell whether on the particular trade made, there was to be a delivery or not?

A. There is no way to tell that that I know of, sir.

Q. At the time the trades are made, is there any way of separating those that are finally settled by delivery from those that are finally settled without? A. Not that I know of, sir.

Q. Is there anything in the way trades are made in the wheat pit to enable anyone to distinguish between those in which the man selling has the property on hand and those in which the man selling has not the property on hand?

A. There would be no way I could see.

689 Q. Is there any way of telling in the way these transactions are made in the wheat pit, between those that are made by way of hedging against actual property in hand and those which are made for purely speculative purposes?

A. I should not think there would be any way of telling.

Q. And those trades, for whatever purpose made, and whatever the intentions of the parties with respect to delivery, are all made in one way, aren't they, so far as the wheat pit is concerned?

A. So far as the wheat pit is concerned every trade is made in one way.

Q. During the time you worked for Dickinson & Company, did you have a settling clerk and a delivery clerk?

A. Yes sir.

Q. Did you have anything to do with his department?

A. I knew him very well, sir, and I have gone over his books with him and have at times helped him getting his trades on the books when he was busy.

Q. That is, the man who kept the delivery book?

A. The man who kept the option book, the ring books and delivery sheets.

Q. For what period of time did you have to do with those books of the Dickinson Company at any one time?

A. I have had similar work. I was not engaged on that, sir; it was only as an accommodation and I had very little to do with it.

Q. Did you have anything to do with drawing checks to pay for cash property? A. No sir.

Q. Did you have anything to do with preparing the documents that were required for delivery under the rules of the Board of Trade, by Dickinson & Company, in case of delivery by them? A. Cash property?

690 Q. Yes?

A. No, sir, simply engaged by Mr. Dickinson as a broker, as I have stated.

Q. If Dickinson & Company received a delivery of property from one man, and then had property in the same quantity sold to another, and delivered the property out immediately to the other on his contract, would there be any money passing?

A. Well, if Mr. Dickinson took in and paid for cash stuff he would certainly have to pay for it; if it was delivered out, he would receive his check back, I suppose.

Q. Well, what would you know about that part of his business? A. I would know nothing.

Q. Didn't know anything about that part of his business, did you? A. No sir.

Q. How do you know then how much Dickinson did deliver and receive? A. How do I know how much?

Q. Yes?

A. Simply because Mr. Dickinson and his settling clerk Mr. Hayes, told me at the time I was with him, that is all.

Q. Your whole evidence on that subject is based upon what they told you, is it? A. Yes sir.

Q. Personally you have no knowledge of the amount of deliveries in Dickinson's office?

A. I was not their option clerk.

Q. Answer the question.

A. No sir, I know nothing about it.

Q. Did you get your information as to the volume of Dickinson's business in the same way, by talking with them?

A. I got the information as to the volume of his business because I filled the orders in the wheat pit.

Q. Now, in reference to Heth & Company? A. Yes sir.

Q. Your place in that firm, your work, was the same as with Dickinson & Company, was it not?

691 A. I was a partner in that. Yes sir.

Q. Who ran the office and provided the capital and made out the trading checks and that part of the work, your father?

A. I signed the checks the same as my father and had as much to say in regard to it as my father.

Q. Who did the work, that part of the work in the office?

A. Our bookkeeper.

Q. Did you have a settling clerk or delivery clerk?

A. The same man was our bookkeeper and settling clerk.

Q. That was Dickinson's?

A. No sir, a man by the name of Smith one time was, and another man by the name of C. H. Sullivan, who is now on the Board of Trade.

Q. You kept delivery books?

A. Kept ring books to settle rings in; kept no delivery books that I knew of.

Q. On the 1st of every month somebody from your office went on the floor of the Exchange, did they?

A. Providing we had any stuff open at the time, yes sir.

Q. What did he go there for?

A. There to have delivery notices or cash wheat delivered to him.

Q. Or to accept delivery of the cash property?

A. To settle up the trades.

Q. Did the man go on the floor of the exchange on the first day of the month to make rings or to accept delivery?

A. Both.

Q. Isn't there a provision that requires members to repair to a certain part of the Exchange building on the 1st day of the month to be prepared to receive deliveries?

A. I believe there is a rule of that kind.

Q. Isn't that a different place from the place where these rings are made? A. Yes sir.

692 Q. And it is an entirely different portion, conducted by different men at a different time?

A. We did not have different men.

Q. It is conducted by your man at different times from the settling? A. Yes sir.

Q. Now, do you know how much property came to that man at those times and was delivered out by him on his trades, or was that somebody else's part of the business?

A. I don't know how many of those delivery notices—

Q. How? A. I don't know as to that, sir.

Q. You had nothing to do with that part of the business?

A. I would have only known if we had received any cash wheat, either me or my father would have had to pay for it.

Q. You are speaking of the property you drew the checks for?

A. I am speaking of the business of Heth & Son, as to whether they received cash wheat or not.

Adjourned on Saturday, November 30th, 1901, at 12:30 p. m. until Monday, December 2nd, 1901, at 10 o'clock a. m.

693 Charles C. Christie, a witness on behalf of the defendant having been first duly sworn was examined in chief by Mr. Jenks and testified as follows:

Q. Mr. Christie, will you state your full name?

A. Charles C. Christie.

Q. Where do you live? A. Kansas City, Missouri.

Q. How long have you lived there? A. Since 1885.

Q. Were you ever a resident of the City of Chicago?

A. Yes sir, about—

Q. Covering what period of time?

A. Well, about two years, 1869 and 1870.

Q. Were you ever a member of the Board of Trade of the City of Chicago? A. No, sir.

Q. Were you ever connected in the City of Chicago with any persons who were members of the Chicago Board of Trade?

A. Yes sir, I have done—

Q. Whom?

A. I have done business with a great many different firms on the Chicago Board of Trade and was personally interested in the business of Counselman & Day, and Norton & Worthington at different times.

Q. Covering what periods of time were you interested with Counselman & Day, and Norton & Worthington?

A. I was interested with Norton & Worthington in a joint account for two years from 1885 to 1887, and did business with them for several years after that as a broker.

Q. And Counselman & Day?

A. With Counselman & Day, I was interested from 1890 to 1893, I think.

Q. What is your business and what has been for the past twenty years?

694 A. I have been engaged almost continuously in the grain business; with the exception of eight months, entirely.

Q. At what points have you been engaged in the grain business?

A. In St. Joseph, Missouri, and Kansas City, Missouri.

Q. Have you ever done, or have you been connected with any persons, members of the Board of Trade, who have done a commission business in grain? A. Yes sir.

Q. What was the business of Counselman & Day?

A. Entirely a speculative commission business.

Q. And what was the business of Norton & Worthington?

A. Their business was mixed, both speculative and handling the cash property.

Q. Were you ever familiar with the manner of doing a grain business on the Chicago Board of Trade? A. Yes sir.

Q. Covering what period of time were you familiar with that?

A. Well, I have been familiar with it for twenty years.

Q. Do you know how the transactions of a purchase and sale of commodities on the Chicago Board of Trade, by Board of Trade Commission houses have been conducted for their customers? A. Yes sir.

Q. How long have you been familiar with that?

A. Twenty years.

Q. Will you state how that business has been conducted on the Chicago Board of Trade for customers living in the country?

A. Do you mean give the process of handling an order?

Q. Commence with the initial order and go through the whole process until that order is closed out and settled.

A. Well, suppose I send Logan an order to buy twenty-five thousand bushels of May wheat: the telegram would send him would read "Buy twenty-five May wheat." If I wished it bought at a limit price, the message would so state. If there

695 was no limit on the message, Mr. Logan would send his broker into the wheat pit to buy twenty-five thousand bushels of wheat at the market and telegraph to me, his

message reading "Bought twenty-five thousand bushels May wheat at" whatever price he paid for it. Then when I closed that trade I would send Logan an order reading, "Sell twenty-five thousand bushels [Mya] wheat" and Mr. Logan would repeat the same process, send his broker into the wheat pit to sell twenty-five thousand bushels of May wheat, and would report the sale to me by wire, have his bookkeeper make me up an account purchase and sale of that transaction, charging me the loss in the price if there was one, a commission, and the government war tax, and debiting my account with this amount of money, or in the event that the transaction had resulted in a profit, my account would receive a corresponding credit.

Q. Then after you got the credit, what further have you as a customer, to do with the transaction on the Board of Trade?

A. Nothing whatever.

Q. Do you know, according to the practice on the Board of Trade what becomes of those two transactions that Logan had there on your account?

A. Yes sir, they are kept open on Mr. Logan's books until some counter trades that he makes with members of the Board enable them to form a ring, and as soon as a ring can be formed, they are rung out and settled by paying the difference between the prices bought and sold through the clearing house.

Q. Do you know how members of the Board of Trade ascertain whether a counter trade has been made with any other member of the Board, or whether trades resulting in rings have been made?

A. Every commission house keeps one or more clerks called settling clerks whose business it is to look after these trades and ring them up as fast as they will ring.

696 Q. What is the object of ringing up trades?

A. To get them off the books, settled, collect and pay differences, not to be bothered with receiving and delivering the cash property.

Q. Do you know anything about the Board of Trade Clearing House?

A. I know its function; I know what it must be from the rules of the Board of Trade. I am familiar with the rules of the Board of Trade.

Q. How are rung up deals settled through the clearing house?

Mr. Robbins: That is objected to. He says he knows it from the rules.

Mr. Jenks: The rules what?

Mr. Robbins: He says he knows what it must be from the rules of the Board of Trade.

Mr. Harkless: He may know it from the practice.

Mr. Robbins: He just said he knew it from the rules.

Mr. Jenks: Q. Are you familiar with the practice as to the closing out of deals through the clearing house by members of the Board of Trade after they have ascertained that rings exist?

A. Yes sir.

Q. Will you state what the practice is as to closing up those deals? A. Through the clearing house?

Q. Yes.

A. Every member who has any trades; they are ready to settle through the clearing house is obliged to fill out a sheet which is called the clearing house sheet, claiming from one member, and crediting to another, and the differences that are due or coming to him, and any items that are cleared this way for his account, and he is obligated to send this sheet to the clearing house with a check to pay his difference, if he owes money or a claim on the clearing house for the balance if one is coming to him, and the transaction is cleared and closed up.

697 Mr. Robbins: Wait a minute. Now I want to move to strike that out. He says he is obligated. That shows as he is testifying to the rules.

Mr. Jenks: Oh, you can strike out that part.

Mr. Robbins: No, strike out the answer, because it appears from his answer he is stating what the rules are.

Mr. Jenks: It is the practice.

The Witness: Well, I will state that that was the practice of Counselman & Day when I was with them.

Mr. Robbins: Well, strike out that he is obligated, then.

Mr. Harkless: What will we put in its place? How will it read if it is stricken out?

Mr. Robbins: That this is the practice of Counselman & Day.

Mr. Jenks: Mr. Robbins has struck out of your answer the words "was obligated." State what was the practice there in closing up trades through the clearing house?

A. The practice was to send a check for balance due on the rung trades, or to make a claim on the clearing house for a balance coming to them.

Q. Will you look at this sheet, which is marked Defendant's Exhibit 1, and state what form has to do, if anything, with your answer relating to a clearing house sheet? that

A. This is the clearing house sheet as issued by the clearing house of the Board of Trade of Chicago, on which these items are from day to day entered by the various houses who clear trade.

Q. You have stated one transaction of purchase and sale of wheat through the house of Logan & Company. Will you state whether or not all transactions for customers are conducted in substantially the same way by Board of
698 Trade houses, members of the Board.

Mr. Robbins: Wait a moment. I object to that—he don't know any thing about—

Mr. Jenks: (Continuing) And if not, how do other transactions differ from the one that you have testified.

Mr Robbins: I object to that. Now the witness has testified that he had to do for a while in some way with the house of Counselman & Day, and now counsel wants to have him state how other members, how the other members of the Board of Trade conduct their business. There is no foundation laid for any such testimony.

Mr. Jenks: The example that the witness gave—

The Master: I understand your purpose is to show the custom of the Board of Trade?

Mr. Jenks: Yes, how they do business there.

Mr. Robbins: By somebody who is competent to testify, who is not a member of the Board, who has in some way happened to be connected with Counselman & Day.

The Witness: I think I have qualified myself—

Mr. Jenks: Never mind.

Mr. Robbins: It is very easy to find out the methods of the Board of Trade by putting Board of Trade men on the stand.

The Master: I think unless this man is a Board of Trade man or has come in contact with the methods on the Board of Trade itself, he would not be competent.

Mr. Jenks: Which he has, and his testimony shows it.

Mr. Robbins: He is not a Board of Trade man and never has been.

699 Mr. Jenks: He knows as much about the Board of Trade as any man who has done business there all his life.

Mr. Robbins: He has never done any business on a Board of Trade.

The Master: I think as an outsider he would hardly be competent to testify as to any custom of the Board of Trade.

Mr. Harkless: He might be a clerk and be familiar with it.

Mr. Jenks: Q. Are you familiar with the manner in which other transactions for other customers, aside from the one transaction which you have mentioned, for instance with Logan & Company, are conducted by members of the Board of Trade for their customers and whether they are conducted in substantially the same way that you have narrated, or whether

they are conducted in a different way, and if different in what does the difference consist?

Mr. Robbins: I object to that; it is a double barrelled question.

The Master: I think that is pretty much of a shot-gun question. Put the first part of it, is he familiar with it?

Mr. Jenks: Q. Are you familiar with it? A. Yes sir.

The Master: Now I think he can state the extent of his familiarity and how.

Mr. Robbins: Yes.

Mr. Jenks: Now, will you state how you became familiar with it?

A. During twenty years I have done business with a great many Board of Trade houses and my experience with all of those houses has been universally the same. I know of no difference in the handling of trades for customers between any two of them, except perhaps it might be in the item of commission; at various times the commission charged by one
700 house might be less than that charged by another house under different circumstances at a different period but the—

Q. How?

A. But the process of handling trades for country customers has been the same for twenty years.

Mr. Robbins: Now it is very apparent that this witness simply knows what the customs of the Board of Trade are as respect their relations with their customers.

The Witness: That is what he asked me.

Mr. Robbins: As to the transactions on the Board, the ringing and all that, he don't know anything about it.

The Master: If you will confine your question to dealing with brokers I think he may answer.

Mr. Jenks: He does not know about the others and he stated that.

Mr. Harkless: He stated that twice.

Mr. Robbins: All right.

Mr. Jenks: Now answer the question.

Mr. Robbins: Wait a minute.

The Master: Confining it to the dealings of Board of Trade members with their customers.

A. The mode is exactly the same in all cases, the manner of handling the customer's business is the same in all cases.

Mr. Robbins: I object to that question if it is meant by handling, handling on the Board of Trade.

The Master: I have confined it, and he has confined his answer to that.

Mr. Jenks: Q. Now in the sending of orders by you, to a Board of Trade house to be executed on the floor of the Exchange room of the Board, will you state whether an order for a purchase with a limit in every case was substantially
701 the same as that you have described with reference to Logan & Company? A. It was the same.

Q. Do you know anything about initial orders for the purchase containing a stop order? A. Yes sir.

Q. Will you define what a stop order means?

A. A stop order is an order that follows a transaction, and is an order to stop a loss should the market go against the party who has this property either bought or sold. It limits his loss.

Q. Then a stop order if given would contain what?

A. It would contain an order, if the party had the property bought, to sell his property if the market declined to a certain price stated in the stop order.

Q. What would be the wording of that stop order?

Q. Give us an illustration of it.

A. It might vary in the custom between any two brokers.

Q. Then if the stop order were given, take it in your own business, how would the trade be closed out by the Board of Trade house?

A. If the market declined—if it had been a purchase and the market declined to the price of the stop order, the broker would go in the pit and sell that quantity of wheat or grain, whatever the commodity was, and report to me that he had sold so much of this property on stop orders.

Q. Would he do that without getting any further order from you to close out the deal?

A. Well, that would depend entirely on the agreement between us as to the handling of orders. If stop orders with the broker was understood to be open orders, he would do it without any further order. If, as is frequently the case, every broker renews his orders every morning, these stop orders would
702 not be renewed every day, but in any event, if the price was reached the same day, it would be closed out without any further word from the customer, and the difference would only be one of custom in the other event.

Q. Do you understand the difference between cash purchases on the Board of Trade and option deals there?

A. Yes sir.

Q. What is the difference between what are called option deals and cash purchases?

A. Option deals are trades made for delivery at some future time; cash transactions are for immediate delivery of the actual property.

Q. Have you been on the Board of Trade in the Exchange room during business hours so as to observe the manner in which business is there conducted? A. Yes sir.

Q. How frequently?

A. Well, I have not been up there in the last five years but two or three times.

Q. Previous to that how frequently were you there?

A. Very frequently.

Q. Are you able to state that you are familiar with the manner in which business is done there? A. Yes sir.

Q. With reference to the purchase of cash commodities there, can you state where there is any place set apart by the Board of Trade for that business?

A. There are a lot of tables ranged around the outside of the hall, where cash grain is handled.

Q. Is there anything else there?

A. Not that I know of, for the handling of cash property.

Q. Where is the place in the Exchange room for the transaction of business relating to deals in futures?

A. They have pits as they call them, a raised platform with steps going up and down on each side, in various parts
703 of the house, which are known as the wheat pit, the corn pit, the oat pit, in which these members stand and trade in future deliveries.

Q. Do you know whether at those pits transactions are made in cash commodities? A. No, sir, I don't know that.

Q. Do you know from what transactions on the Board of Trade reports are gathered which are sent out and become what we call market reports?

A. Yes sir, they are gathered from the prices made in transactions in these pits for future delivery and are the prices of the commodities for future delivery.

Q. Do you know for how long a time on the floor of the exchange room of the Board the reports of transactions there at the pits have been gathered and sent out to the public?

back

A. It dates farther than my experience.

Q. And your experience extends back how many years?

A. To 1880.

Q. Do you know by whom, when your experience commenced, the market reports were gathered and sent out?

A. No sir.

Q. At the first of your experience, to whom were those market reports sent? A. Anyone who would pay for them.

Q. And they were sent and distributed? A. Yes sir.

Q. And pay received by whom in your first experience?

A. Why the telegraph company.

Q. What Telegraph Company? A. The Western Union.

Q. And how long did the Western Union continue to send out to the public in that way and receive pay for market reports?

A. My memory is very bad as to dates. It seems to me the first time that we were without market reports, or that the trades—

Q. That is not the question?

Mr. Robbins: Let him answer.

704 A. I think you asked me when the Western Union first ceased to send them out?

Mr. Jenks: Read the question.

(Question read.)

Mr. Jenks: I am commencing with your first experience, where you say they sent to any members of the public who would pay for them. I want to know how long that continued to your knowledge?

A. I am not clear on it. I don't know.

Q. For how long a time in your experience have continuous market reports been sent out over the wires and distributed among the people, to any people who would pay for them?

A. You mean at various times?

Q. Yes, take it all the time?

A. Well, with the exception of the last year, year and a half, is it?—And a period following 1890 pretty close, and another period of about 1886, I have no recollection of any time when the Western Union did not furnish them to everybody.

Q. Who wanted them? A. Yes, sir.

Q. What effect if any, had the sending out and receipts of these market reports from the Chicago Board of Trade upon the business of the country, especially in the West, in commodities that are dealt in on the Chicago Board of Trade?

A. The whole market price of the west is made by the fluctuations of grain on the Chicago Board of Trade for future delivery; well, those are the fluctuations.

Q. And what has that to do with the transaction of business in the country in the same commodities?

A. Nearly every purchase and sale of grain in the west, the northwest and the southwest is made and based on the price of that property in Chicago each day and from hour to hour.

705 Q. What will you say as to the effect of sending out these market reports to the public continuously for a great number of years upon the ability of any person in the country to deal in the same commodities without knowing what the market prices are in Chicago?

A. It would be almost impossible to do any business in the country without knowing the Chicago market.

Q. What will you say as to whether the continuous sending out of market reports from the Board of Trade of the City of Chicago have affected the general grain business of the north-west to the extent that all business that is conducted in the north-west has conformed itself to the receipt of continuous market reports daily?

Mr. Robbins: I object to that. I think it is about time this witness was allowed to do the testifying.

The Master: I must say I do not understand this question.

Mr. Jenks: If the witness does I do not know that anybody else needs to.

The Master: Do you understand that question, Mr. Witness?

The Witness: I think I do.

Mr. Robbins: The effect of that question may be very grossly leading.

The Master: I think it is leading, Mr. Jenks. He may state to what extent the market reports do affect the grain trade in the northwest if he knows.

Mr. Jenks: Mr. Christie, has the business of the country generally, in commodities dealt in on the Chicago Board of Trade been at all affected by the fact that for a great many years last past continuous market reports have been sent out to the public generally? A. Yes sir.

Q. To what extent?

706 A. Why, to such an extent that the grain markets of the United States and the southwest have been absolutely made and controlled by the prevailing prices in Chicago, both on and off the various Boards of Trade located west and southwest of Chicago. The price of wheat in Kansas City goes up and down as the price of wheat in Chicago goes up and down, and the same is true in St. Louis and the same is true in Minneapolis.

Q. How about Cincinnati?

A. I am not familiar with the Cincinnati market, don't know that they have a continuous market there. It would be true of Cincinnati; any cash transactions that they had there, or any other transactions in grain would be based on the fluctuations of this market.

Q. Mr. Christie, in your own business in the past twenty years. and businesses that you have been connected with, how extensive have your transactions been on the Chicago Board of Trade? A. They have been very large, amount to—

Q. Averaging say, how much?

A. Well, it would be pretty hard to average them, but I think amounting to hundreds of millions of bushels.

Q. And generally in what commodities were those transactions?

A. Largely in wheat and corn, some provision trade, not a great deal.

Q. And in those transactions of your own which have been had on the Chicago Board of Trade in the past number of years, how have those deals been settled and closed up as a rule?

A. With the exception of one transaction they were all closed and settled by settling one trade against the other, direct settlement, really a cancellation of contracts as between the Board of Trade house and myself.

707 Q. They were settled by payment of what?

A. The difference in the market price, the price bought and the price sold at.

Q. In the past twenty years that you have been engaged in business through members of the Board of Trade of Chicago, of on the Board, have any those deals, resulted in the delivery and payment for the commodity?

A. Well, there was one transaction I had on the Board of Trade with Baldwin & Stone, two hundred thousand pounds of ribs resulted in delivery of the property. I had a customer who demanded the delivery of the property and they delivered me the warehouse receipts and we paid for them. That was the only case. We were never to receive anything or pay for it by the member of the Board of Trade, and it is a fact that a man can go over there now and trade until the day he dies and never be obliged to receive or pay for a bushel of grain and never be out of the market.

Mr. Robbins: I move to strike out the answer.
Mr. Jenks: Strike out the last part of the answer.
Mr. Robbins: All that after, "It is a fact."
The Master: It is stricken out.

Mr. Jenks: Q. Do you know of any way by which people deal on the Board of Trade and such dealings may be conducted for any number of years without resulting in the delivery of the commodity dealt in and if so, state what that way is?

A. Yes sir. A man may buy wheat for December delivery and before December comes, say the last day of November, he can order his broker to change it over to May. His broker will cancel the December contract, close it up, and make a new contract for him for May. He can then wait until the last day of April, renew his order to his broker and tell him to change it over to July. The broker will go through the

same process, and the last day of June he would repeat
708 the same thing, and the man might stay in the market indefinitely and never be tendered a bushel of grain of any kind whatever.

Q. Now in the first transaction of closing up the December deal how would that be closed and finally ended between the Board of Trade house and his customer?

A. They would simply report the counter trade to his customer and cancel the contracts and settle the difference.

Q. Settle the difference in what?

A. In the price bought and sold at, the December wheat, if it was wheat, the price that he bought and the price that he sold it at.

Q. Do you know of your own knowledge anything about transferring deals on the Board of Trade? A. No, sir, I don't.

Q. Will you state, Mr. Christie, whether the Telegraph Companies during this year or any of them, take the early part of the year down to June,—when was this bill filed, Mr. Shea?

Mr. Shea: In June the 9th of June, I think.

Mr. Jenks: (Continuing.) Down to the 9th of June, were in possession of the market reports from the Chicago Board of Trade which they were sending out through the country?

A. Down to the 9th of June?

Q. Yes sir.

A. My memory is that they were in possession of them from the first of April.

Q. Down to what time?

A. Down to the present time. Perhaps I am wrong about it, but certainly from the time of the contract between the Board of Trade and the Western Union Telegraph Company for those market reports.

Mr. Harkless: That is right, April.

A. Wasn't that in April?

709 Mr. Jenks: Q. Were those market reports sent out, and have they been, by the Western Union Telegraph Company and delivered to some people?

A. Yes sir, delivered to anybody that the Board of Trade would approve; the contract with the Board of Trade obligated the Telegraph Company to submit to them the name of the applicant for these quotations.

Q. Do you know whether the Board of Trade refused to approve the application of anybody who wanted them, for the market reports? A. They refused to furnish them to me.

Q. Do you know whether they will furnish the market reports to anybody who has a good reputation?

A. That would depend entirely on who was to pass on the reputation.

Q. Who does pass upon the reputation?

A. I imagine Mr. Robbins and Mr. Warren, to the best of my ability. I made an application over there for them and Mr. Warren and Mr. Robbins passed on my case; at least—

Q. Did you ever hear that you were not a man of good reputation in the community where you live?

A. I have a fair reputation in Kansas City.

Q. Do you know whether any [—] of good reputation can upon application become a member of the Board of Trade?

A. No sir, I don't think he can.

Q. Do you know what it depends upon, whether a man can become a member of the Board, or whether he can receive market reports with the consent of the Chicago Board of Trade?

A. My own experience is that I could only have the market report [is] I would agree to send all the business that I did to the Board of Trade. I made an application to—

710 Q. Never mind that. In your dealings in commodities, state whether they are the same commodities or different ones from those dealt in on the Chicago Board of Trade? A. The same commodities.

Q. And as to your customers, how do they differ from country customers of members of the Board of Trade in the commission business?

A. There is no difference. Our customers are made up of grain dealers, people running elevators, speculators, shippers.—the same class of men that trade over here.

Q. What do you mean by over here?

A. Over on the Chicago Board of Trade.

Q. You have stated that you could not obtain the market reports with the consent of the Board of Trade unless you agreed to send your deals and have them executed on the Chicago Board of Trade. How do you know that?

A. I made an application for a market report over to the Western Union Telegraph Company and to Mr. Warren, President of the Board of Trade. I made my first application to Mr. Warren through Colonel Conley of Schwartz Dupee & Company.

and

Q. Who were Schwartz Dupee Company?

A. A large speculative house on the Chicago Board of Trade.

Q. Go on?

A. And Col. Conley wrote me that I had better come over and see Mr. Warren personally, which I did. I saw Mr. Warren, together with Mr. Robbins, offered them $150.00 a month for the market report and agreed that I would not make a trade

in my office that was in any way prohibited by the laws of the State of Missouri. We discussed the quotation question for quite a time and they refused,—

Q. Who discussed it?

711 A. Mr. Robbins, Mr. Warren and myself, and it resulted in their refusing to give me the quotations unless I would agree that every order I got I would place on the Board of Trade. That I would not agree to. Mr. Warren in the course of the conversation said that it had gotten to this point, that the bucket shops had got to quit or the Board of Trade had got to quit. I said, "That is a remarkable statement; do you mean to say that if all the men who bet on these markets outside of the Board of Trade should quit that there would not be any more market for grain in Chicago"? "Oh, no," he said, "There would be a cash market for grain." I said "Wouldn't that market be there forever"? He said, "Yes" that would be true, but there would be sixty men upon this floor could do all of that and there were two thousand members of this Board of Trade who were trying to make a living.

Mr. Robbins: I move to strike that out as not pertaining to any issue in this case.

Mr. Jenks: I insist that that is pertinent to the issues in this case.

The Master: It may stand.

Mr. Jenks: And I insist that—

The Master: It may stand.

Mr. Harkless: He says it may stand.

Mr. Jenks: Q. When was that conversation that you had with Mr. Warren, the President of the Board of Trade of the city of Chicago and Mr. Robbins, the present solicitor for that Board?

Mr. Harkless: And where?

A. It was shortly after the decision of Judge Tuley rendered here.

Mr. Jenks: Tuley?

712 A. Yes, rendered here against the Christie Street Commission Company, perhaps two weeks later or a month maybe.

Mr. Jenks: When was that Harkless, June, 1900?

Mr. Harkless: Yes, June 19th.

Mr. Jenks: Q. Then it was about June, 1900? A. Yes sir. Q. Who else were present at the time you had that talk? A. I think no one. I don't remember any one else being there. The conversation was in the—well, some office in the Board of Trade Building.

Q. In the Board of Trade Building?

A. I don't know whether it was the President's office or the Secretary's office, but it was one of the offices over there.

Q. In the Board of Trade Building? A. Yes sir.

Q. Mr. Christie, do you know anything about the market reports from the Chicago Board of Trade being transmitted over wires to telegraphic instruments called tickers from which a tape is run, and upon which tape is stamped the prices, commodities and options? A. Yes sir.

Q. For how long a time to your knowledge have the market reports been so transmitted and printed on the tape.

A. It is a good many years, I think twenty years.

Q. Do you know where those tickers have been kept, and at what points in cities or otherwise the market reports have been so transmitted to tape that could be read by ordinary people?

A. They have been made very public generally in all the cities in the brokers' offices, a great many banks, a good many hotels and saloons.

Q. Throughout what portion of this country?

A. Well, in every city where there was enough de-
713 mand for the quotations to warrant the ticker service; in little hamlets, little small towns, they never had a ticker service but all the cities of any size that I have ever been in, Chicago, Kansas City, St. Louis, New York, Boston, Cincinnati.

Q. In what manner to your knowledge have the market reports been transmitted from the Board of Trade Building in Chicago?

A. Do you mean how they got out of the Board of Trade building?

Q. Yes sir?

A. I don't think I am competent—I don't know.

Q. How have they been transmitted from the City of Chicago?

A. Over a wire that has been known as the market wire, which carries the continuous market report, the continuous report of the fluctuations of the price of property dealt in on the Chicago Board of Trade for future delivery as these transactions transpired from minute to minute during the trading hours of the day.

Q. We will suppose that wire runs from Chicago to Kansas City. Now then in Kansas City are those market reports transmitted from that wire to tickers that may be located at different places throughout the city of Kansas City?

A. They have what is known as the ticker circuit. These tickers are attached to a local circuit and this market report

comes into the general offices at Kansas City. That is then [relaid], or resent over this ticker circuit, and these—

Q. How many places in Kansas City do you know of where the continuous market reports from the Board of Trade of the City of Chicago have been received from day to day for the past, say ten years?

A. Oh, the number varied; I suppose the average ticker subscriber in Kansas City to the Chicago Board of Trade quotation for ten years would amount to twenty-five possibly.

Q. How was it on the 9th day of June, 1901, and for
714 months prior thereto?

A. Up to some date this summer, or this spring, the continuous market report was not sent to Kansas City at all, since the unpleasantness between the Board of Trade and the Telegraph Company, which is over a year, I think; I don't know about that now.

Q. In June last it was about?

A. Well, I am not certain as to those dates. The Western Union Telegraph Company supplied no one with the market report from the time they quit doing business on the Board of Trade until this new contract went into effect under which they are doing business now; that was some time—

Q. Was that about—they stopped sending them out about July 31st 1900, and commenced again early this year?

A. Yes sir. They only send them now though to people that the Board of Trade allow them to.

Q. And how many different tickers were receiving those market reports in Kansas City on and previous to the 9th day of June 1901?

A. None, I think, if you mean during the interval when they were out of business.

Q. I don't. A. Then I don't understand your question.

Q Well, they commenced sending them out about the 9th day of June, didn't they, didn't they commence sending them out in April?

A. My recollection is the telegraph company notified me that they had made a contract about April 1st and it would be necessary to make application in writing for the quotations and that permission—

Q. Now from the first of April to the 9th of June, how many places in Kansas City were receiving the market reports over the tickers?

A. Oh, I think none; I don't think the ticker service was worked down there at all.

715 Q. Now is there, and has there been for years, any other way of receiving market reports than through the ticker service? A. Oh, yes.

Q. What is that?

A. People send them over public wires and over private wires.

Q. And they are received by means of a Morse Telegraph instrument? A. Yes sir, I suppose they are.

Q. Now how many people in Kansas City were in receipt of the continuous market reports by wire, telegraph wire on the 9th day of June, of this year, and for months prior thereto?

A. Well, eight possibly.

Q. Who were those people that were allowed to receive the Chicago market reports on and prior to the 9th day of June this year?

A. They were brokers for Chicago Board of Trade houses.

Q. Go on?

A. Those were the only people that were allowed to receive them.

Q. How about the Kansas City Board of Trade?

A. Well, the Kansas City Board of Trade didn't get them; they posted the Minneapolis market for nearly a year and did not again have the Chicago Market until after this contract with the Telegraph Company.

Q. Previous to the year 1900, how many people in Kansas City were receiving the continuous market reports from the Chicago Board of Trade? A. I imagine twenty-five.

Q. And for how long a time did that continue, I mean for what period of time did it cover?

A. I was trying to think. The last quotations there were, that we had, that amounted to anything were probably made in 1892, is my impression, 1892 or '3, and from that time on the quotations were open and free, unless my memory is very bad; I never had any trouble about quotations in the last seven or eight years until this trouble.

716 Q. And when did this occur?

A. This commenced something about a year ago.

Q. In what manner, after the receipt of these market reports by wire, have the reports been treated in different offices for the past number of years, say for ten; I speak with reference to blackboards more than anything else?

A. They have been spread upon blackboards and made public just as soon as they were received over the wires; they were spread upon a blackboard on the Kansas City Board of Trade, taken from a sounder, Morse instrument.

Q. In what other place have they been spread upon a blackboard?

A. In all these brokers' offices, the Board of Trade brokers' offices; the Chicago Board of Trade Brokers' offices say they did.

Q. And other places throughout the country? A. Yes, sir.

Mr. Robbins: I wish you would read that.

(Last question and answer read.)

Mr. Robbins: Do you mean prior to this year, to August 1st?

Mr. Jenks: I mean all the time for twenty years, market reports have been spread upon blackboards in different offices.

Mr. Robbins: I want Mr. Christie to understand it, that's all.

A. Well, my answer would be yes to that question.

Mr. Jenks: Mr. Christie, for how long a time to your own knowledge have the market reports from the Chicago Board of Trade been spread upon blackboards in different offices?

A. Just as long as I have been familiar with the business, twenty years.

Q. Do you know of any Chicago Board of Trade houses that have blackboards now? A. Yes sir.

Q. For how long a time have those same ones had blackboards in their offices?

717 A. I think from the day they started in business, as long as I knew them at any rate.

Q. And you have known them how long?

A. Well, for various lengths of time.

Q. Take the longest one?

A. Counselman & Day have had a blackboard ever since they moved into that building.

Q. That was about when?

A. That was just after building the new exchange there.

Q. Just after the present Board of Trade building was erected. [Q.] Can you tell about what year that was?

A. No, sir, I cannot.

Q. Well, for about how many years have you known of blackboards being in the offices of different Board of Trade houses?

A. I think they have been there ever since they have been doing business, ever since I have been familiar with the business.

Q. Do you know whether on the Chicago Board of Trade, in the exchange hall, there is a blackboard?

A. I don't know whether there is one there now, no sir.

Q. Do you know whether there ever was one there?

A. Yes sir, there used to be a most voluminous blackboard; the whole side of the house covered with them.

Q. And what was posted upon that blackboard?

A. The various markets of the country, statistical information, and the market of their own board as it changed from time to time.

Q. And in the different offices of members of the Board of Trade houses where they have had blackboards, what has been posted on those blackboards?

A. The same general information, with a further complete market report of the New York stock market now is nearly every Board of Trade Houses' blackboard, and the cotton market.

Q. Anything else?

718 A. Well, statistical information, regarding movements of grain and provisions, receipts and shipments, cables—

Q. All confined to this country, or does it extend to European markets? A. Extends all over the world.

Q. And that information is posted on how many blackboards to your knowledge? A. In the United States?

Q. To your knowledge?

A. Oh, that is a very hard question to answer.

Q. Well?

A. To my knowledge every broker that is engaged in the speculative business has such a blackboard, or publishes such a report.

Q. That is, posted do you mean, on the blackboard?

A. Yes sir.

Q. In Chicago in what offices of Board of Trade houses do you know that blackboards have been kept and maintained for the purpose of posting market reports?

A. Of those that I knew of?

Q. Yes?

A. Counselman & Day, J. F. Harris, Schwartz & Dupee, Logan, Weare, Leland—well, I don't think of any others just now.

Q. How many of those houses have their offices and blackboards in the building which is owned and controled by the Board of Trade of the city of Chicago?

A. Logan, Schwartz & Dupee, and Harris are all in the Board of Trade.

Q. For how long a time to your knowledge have those blackboards been maintained in the Chicago Board of Trade building in the offices of different members of the Board?

A. Ever since the building has been erected.

Q. Do you know of any time since that building was erected when the market reports of the markets established by the transactions on the floor of the exchange room of the Chicago Board of Trade were not posted on those blackboards in the different offices of members? A. No sir, I think not.

Q. I mean the continuous market reports from day to day during business hours of the Chicago Board of Trade?

A. Do you mean the market reports as furnished now officially by the Board of Trade?

719 Q. Well, I don't think there is any furnished now officially by the Board of Trade. I mean the general con-

tinuous market reports that have been sent out over the country. I want to know whether those continuous market reports have continued to be posted on blackboards in the offices of different members of the Board of Trade?

A. They have been posted at all times; my recollection is that there was a period back in 1891, or 1892 when there was some regulation that they could only post quotations within certain limits.

Q. Then I will not go back of 1892. I will take the period of time since 1892? A. No sir.

Q. And cover all the time down to the present.

A. They have been posted there all the time to the present.

Q. Now I have so far limited myself to the blackboards in the Board of Trade Building in that continuous time. How has it been outside of the Board of Trade building and outside of the city of Chicago, where members of the Chicago Board of Trade had blackboards, how has it been about keeping the market reports posted on those blackboards for the past nine years?

A. It has been the same; they have been continuously posted all over the country.

Q. Not only in the city of Chicago, but different cities?

A. Yes sir, everywhere where the market reports reached, and they reached pretty near everywhere; I have seen them from San Francisco to Boston and from New Orleans north.

Q. Mr. Christie have you made an estimate of the quantity of material dealt in on the Chicago Board of Trade from time to time in the matter of purchases and sales for future delivery?

Mr. Robbins: Wait a minute.

Mr. Jenks: I will withdraw that question just at present.

720 Q. Mr. Christie, in these transactions on the Board of Trade by its members and for their customers, do you know anything about trades that are called hedges?

A. Yes sir.

Q. What is a hedge?

A. Hedged trade is where a man who owns cash commodity makes a sale of some future option on it, and by that protects himself from a loss, and to gain the profit in the carrying charge in the higher price in the future as against the immediate price for the present; the trades are made almost entirely by cash handlers of grain. They are used continuously by the warehousemen and the elevators.

Q. Do you know how hedging trades, are made and how they are closed up as a rule on the Chicago Board of Trade?

A. Yes sir.

Q. Will you state how?

A. Well, shall I give an illustration?
Q. Yes sir?

Mr. Robbins: Wait a minute. I object to the question.
The Master: I understand this witness has never been on the floor of the Board of Trade.
Mr. Robbins: He has not seen or visited on the floor for four or five years.
Mr. Jenks: He has had a whole lot of business.
The Master: With brokers, but I doubt that that would make him competent, except as to his own particular trade.
Mr. Robbins: That is all right, if you confine it to that, I have no objection.
Mr. Jenks: If he knows, and he knows better than the Master does if he knows. If he knows is there any objection to his stating?
Mr. Robbins: Yes, because the witness is not the Judge.
721 The Master: I don't think he has shown himself competent to testify as to what has been done on the Board of Trade, not being a member and not being on the floor.

Mr. Jenks: Q. Will you state Mr. Christie, whether you know how customers who make settling trades have those trades closed out, so far as they are concerned? A. Yes sir.

Mr. Robbins: Wait a minute.
The Master: That is another proposition, so far as they are concerned.

Mr. Jenks: Q. Will you state how those trades are closed so far as the customers are concerned?

Mr. Robbins: Wait a minute. It is not shown this witness has any means of knowing outside of his own trades. If you want to confine him to his own trades, that is all right.
Mr. Jenks: When he answers that he knows?
The Master: I think you can cross-examine on that.

A. Well, shall I illustrate the hedge business?
Mr. Jenks: You may do it in your own way.
A. Well, Armour & Company are large buyers of wheat, cash wheat; they buy from the country when the crop begins to move and put it in elevators in Chicago. Assuming that this business is done largely through the months of July and August, they would sell and equal amount of [of] their purchases, of September wheat, putting the cash wheat as it arrived in an elevator. The September option being higher than the cash price all the time, the difference in the storage, insurance and interest would be the cost of carrying the property. When the last day of August arrives Mr. Armour would buy in his

short contracts for September and put them out for December at again a higher price and he would repeat this again
722 with December to May, thus making the carrying charge on the property, from the time he put it in, in the summer, to the spring of next year.

Q. And in the meantime where would the actual wheat be?

A. The actual wheat would be in the elevator and Mr. Armour would continually ring out these trades he made as hedges, with no delivery of the property.

Q. What does the man do with the actual property that he has in the elevator?

A. He keeps it there as long as it is profitable to carry it. Under normal conditions the price of wheat after May, would be a discount instead of a premium, consequently the elevator man would be ready to unload his wheat in May, not carrying it against a lower future July, and then he would go in the pit and buy his May wheat contract. He would deliver the wheat on those contracts because—

Q. I asked you what becomes of the wheat, the cash wheat that is in the elevator?

A. He would sell wheat for cash then and ship it out, sell it for export.

Q. Yes, but is it? A. Sold for export usually.

Q. Is it sold on the Chicago Board of Trade for future delivery?

A. No sir, it is a separate transaction from any other.

Q. Now suppose an outsider having the wheat in store makes a hedge deal on the Board of Trade, then that the holder of the wheat sells it and it is shipped east, what becomes of the hedge trade? A. After the wheat has left?

Q. Yes?

A. Well, who is your shipper in this case, the man who has got the hedge deal or the other man?

Q. Either the man that has got the hedge deal or else the man who has got the actual stuff and shipped it?

723 A. If the man who has had the hedge deal shipped the wheat out, he would simply let his hedge alone until he sold it; he might not sell it until that wheat reached Liverpool.

Q. And then what?

A. He would buy in his option on the Board of Trade.

Q. And then close out that transaction in what way?

A. By ringing it out, paying the rest in difference.

Q. How extensive Mr. Christie, is that hedging business in this country?

A. It is perfectly enormous. I think the grain of the whole United States and perhaps of the whole world is hedged on the Chicago Board of Trade time and time again.

Q. And where that is done how are those trading deals closed?

A. In just the same manner. A hedging deal does not anticipate a delivery any more than the straightest speculative deal a man ever went into.

Mr. Robbins: I object and move to strike out the answer.

Mr. Harkless: For what reason?

Mr. Robbins: This witness is shown never to have had any connection with a hedging deal at all. He has no connection with Armour & Company, and I do not know why he [—] gone on at this length to show what is done on the Board of Trade.

Mr. Jenks: You will be wonderfully surprised on cross-examination if you think what you have just stated is true.

Mr. Robbins: I want to strike that out. It is a pure matter of opinion. It is perfectly absurd to fill the record with such trash as this, by a man living in Kansas City and never having himself transacted a bushel of transactions on the Chicago Board of Trade.

724 The Master: He has given a specific instance and you have a right to cross-examine him as to that specific instance. I think it may stand.

Mr. Robbins: How about the last?

The Master: You have gone into the general subject of hedging, instead of confining it to Armour & Company, the illustration I understand you are giving.

Mr. Robbins: Then that goes out.

The Master: That goes out.

Mr. Jenks: I object to that going out, so in that way we will keep it in.

Q. How about a purchaser of corn in the country who puts it into cribs and stores it there afterwards making hedging deals against that corn on the Chicago Board of Trade; do you know any such business as that?

A. Yes sir, the proposition is practically the same as the elevator illustration, only the corn in one case would stay in cribs and the wheat in elevators; the same general effect.

Q. When that corn comes out of the cribs as a rule, where is it sold and shipped to? A. As a rule—

Mr. Robbins: I object. It isn't shown that this witness knows anything about it.

Mr. Jenks: Q. Do you know where as a rule it is shipped and sold?

A. Yes sir, it is shipped and sold and goes under consumption or for export from the cribs as a rule.

Q. And suppose that is in the west, west of here, or west of the Mississippi river or in the State of Illinois, that the corn is cribbed, as a rule where is that corn shipped to?

725 A. To points of consumption in the United States and to points of export if it is sold to go abroad shipped direct to the seaboard, New Orleans, Newport News, New York, Baltimore.

Q. Now I will take the same thing as to wheat. Do you know whether wheat is purchased in the country west of Chicago and stored in warehouses outside of the city of Chicago?

A. Yes sir, very largely, and very largely hedged in the Chicago market

Q. Do you know where, as a rule, that wheat is shipped to?

Mr. Robbins: I object. I want to make my objection plain, because I want it to appear on this record. He as a witness was not able to state as to any specific deliveries or transactions of his own, but was called as an expert to give his testimony as to whether generally the Brokers of corn, selling corn, and the stores of wheat in the elevator sold their wheat in the elevator, and he is asked where as a rule they ship it?

Mr. Jenks: That is not the object of the question.

Mr. Robbins: I submit, because the witness is hardly free to state that he knows, and don't say he has ever been in that business, and in fact he has not been in that business, that does not qualify the witness to give his opinion, and there isn't any way of getting opinion evidence into the record in that way.

Mr. Jenks: No, the witness knows all about it.

The Master: I shall let that stand. Objection overruled.

726 (Last question read.)

A. Not entirely. The wheat from Kansas City rarely goes, any part of it to Chicago, for various reasons. To begin with, the wheat of Kansas, which is the wheat traded in principally in Kansas City, is most of it a grade which is not deliverable on the Chicago Board of Trade, and the most of it leaves Kansas City going direct to the mills, or going direct to the seaboard, instead of east or south, for export, very little of it coming to Kansas City.

Q. The object of my question was—

A. There would be very little of it coming to Chicago.

Q. That was the object of my question, to show whether it comes to Chicago. Now without reference to where the

wheat goes to, and is actually consumed, do they close up these hedging deals on the Chicago Board of Trade in the manner that you have stated?

Mr. Robbins: Wait a minute, I object to that. That is going into the way they do it on the Chicago Board of Trade.
Mr. Jenks: Well, I will withdraw the question.

Q. You have stated that the wheat in Kansas City is not of the grade dealt in on the Chicago Board of Trade. Does the fact that a man has in store a grade of wheat in the country which is not dealt in on the Chicago Board of Trade interfere with him in any way in making a hedging deal on the Chicago Board of Trade? A. No sir.

Mr. Robbins: I object to that, what is the method on the Board.
The Master: Objection overruled.

Mr. Jenks: Q. Take it in the matter of corn, corn that is cribbed in the country is cribbed how, in the ear? A. Yes sir.
Q. How is corn sold on the Board of Trade, in the ear?
A. No, sir.
Q. Is there any grade established as to corn in the Chicago market?

A. There is for every kind of grain certain require-
727 ment to make the speculative grade, Number 2 corn, number 2 wheat, number 2 oats, and all this property must be of certain weight, certain conditions. If it don't come up to this standard or does not grade, it is not deliverable on Board of Trade contracts.

Q. Then as a matter of fact these people who make hedging deals on the Chicago Board of Trade, having in possession a grade of corn that does not come up to the grade that the members of the Board have a right to deal in, does that interfere in any way with their making those hedging deals?

Mr. Robbins: I object to the question.
The Master: You may answer.

A. No, sir, it does not. They hedge anything that is wheat and sell 2 wheat against it, and they do the same thing with corn or anything else.

Mr. Jenks: Q. What do you mean by 2 wheat?
A. No. 2 wheat is the contract grade that is deliverable on Board of Trade contracts.
Q. Now we will suppose that a man has made a sale of wheat on the Chicago Board of Trade against wheat which he has in store, and that wheat that he has in store is not up to

the grade that he sells. Will you state whether in making a delivery, if he wants to make it, on that same trade that he has on the Board he can deliver the inferior wheat that he has in store? A. No, sir, he could not.

Mr. Robbins: I move to strike that out on the ground that that is a matter governed by the rules, and he does not know anything about what can be delivered on the Board of Trade.

Mr. Jenks: I am asking him about the prices.

Mr. Robbins: This man has not seen the inside of the Board of Trade for five years.

728 Mr. Jenks: I will bet you that he knows as much about the Board of Trade as you do, and I will bet you that you have been there lots of times.

The Master: Let it stand.

Mr. Jenks: Q. Mr. Christie, do you know about anything called spreading deals on the Board of Trade?

Mr. Robbins: I make the same objection.

The Master: Mr. Jenks, just confine him to transactions with customers of which he has knowledge.

Mr. Jenks: I am.

Q. What are spreading deals, so far as the customer of a Board of Trade house is concerned?

A. A spread is a trade between two markets, buying the same commodity in one market and selling it in another; illustrating it, I had one myself a few months ago in which I bought four hundred thousand bushels July wheat in Chicago and I sold four hundred thousand bushels of July wheat in Kansas City. That was a spread, on the same amount of property, or the same property, bought in one market and sold in the other. That is done for the purpose and with the idea that the prices of these commodities in these two markets will conditionally change so as to show the party who makes this trade a profit. In the illustration that I have just given the market did change in my favor and I closed the trade at three cents profit.

Q. How did you close the trade in Chicago?

A. By selling four hundred thousand bushels of wheat in Chicago, and buying four hundred thousand bushels of wheat in Kansas City.

Q. And how was the trade in Chicago closed and ended?

A. So far as I was concerned it was ended by simply cancelling the trades and paying me nine thousand dollars in difference.

729 Q. Difference in what?

A. Difference in price between the price I had it bought and the price I had it sold.

Q. Are those spreading deals frequent or seldom?
A. They are frequent among speculators.
Q. Now what do you call a speculator with reference to Board of Trade deals?

Mr. Robbins: I object to that.
The Master: Objection overruled.

A. Shall I answer?
Mr. Jenks: Yes.
A. I call a speculator a man who makes a trade purely with the idea of making a profit on a transaction in distinction to a transaction made by a man who hedges wheat or corn by a sale, either to protect himself from a loss or to make the carrying charge.
Q. Well, what has the delivery to do with the speculator?
A. Nothing in the world, but the difference is—
Q. What I want to get at is, whether the pure speculator may be speculating there because he wants the stuff and wants to pay for it, or whether he wants merely the difference between the market price?

Mr. Robbins: I make the same objection.
The Master: That objection is good, what this gentleman means by a speculator. Do you know what a speculator is, would be the proper question.

Mr. Jenks: Q. What do you mean by a speculator?
Mr. Robbins: He has already stated.

Mr. Jenks: Is there anything else that you have not already stated in your meaning of the term speculator?
A. Not as I understand—I may not understand your question. A speculator to me is a man who buys the prop-
730 erty simply to get the profit in the rise in the value of it, where a man who sells futures—makes contracts for future delivery to make the carrying charges is not speculating at all. He is not affected by the fluctuations in the market. He will make a profit out of his short sale, no matter where the market goes to, consequently he is not a speculator; he will buy in his wheat when the time comes and the difference in the value of his cash wheat is offset by any difference there is in the other wheat, but he has earned his carrying charge.
Q. Mr. Christie, have you made any investigation or estimate of the amount of commodities dealt in on the Chicago Board of Trade in futures covering a period of any time, day, week, month or year?

Mr. Robbins: That is objected to as calling for an opinion from a witness who has not seen the Board of Trade in five years as to the amount of stuff.

The Master: That is not the question. The question is, has he made any estimate. He may answer.

A. I don't hardly know what you mean by an estimate.

Mr. Robbins: If you are going to ask him yes or no, I don't object.

Mr. Jenks: Read the question.

(Question read.)

Mr. Robbins: Now just yes or no.

A. Well, still think I do not know what you mean. If you mean if I have got any figures or any basis to figure on—

Mr. Jenks: Q. What I am trying to ask is, whether you have made any estimate of the gross amount of commodities dealt in on the Chicago Board of Trade in these deals for the future, as to what they would all amount to for the day, week, month or year.

A. Yes sir, I have at various times made estimates.

Q. Have you made any investigation so as to post
731 yourself as to the amount of commodities dealt in on the Chicago Board of Trade produced in a year in the country tributary to the Chicago Board of Trade?

A. Estimate of the amount of grain raised?

Q. Yes sir.

A. Well, that is a matter of public knowledge; don't need any estimate.

Q. Do you know as to the amount, if you were limited to grain, do you know the amount of grain produced in that part of the country which is tributary to the Chicago Board of Trade?

A. No, I would not like to state the figures. I know pretty well the crop of Illinois and Iowa for the last year because I looked it up a day or two ago. The crops of the other states that are tributary to Chicago I don't remember only in a general way.

Q. Have you informed yourself as to the amounts of grain receipts in Chicago and the shipments from Chicago of grain for any year?

A. Yes, sir, I looked that up. In the last year the receipts and shipment—

Mr. Robbins: Wait a minute.

The Master: I think that is of course in the market report and he had better produce the original evidence.

Mr. Robbins: Unless he has something to do with making them.

The Master: If they were regular publications they would be competent on that. He simply looked it up; I presume he has gone to those calculations.

Mr. Robbins: Mr. Stone made those calculations and you can put him on the stand. These figures are made on the Board of Trade, and his business is to collect them every day.

Mr. Jenks: His memory is just as good as his.

732 Mr. Robbins: This man simply read some publication of some [of some] kind.

Mr. Jenks: Q. Mr. Christie, you testified to being interested with some house here, commission house, in their Board of Trade business. I don't know whether I asked you the extent of business by them done on the Chicago Board of Trade, the average deals and the gross amount of property dealt in for a day, week, month or year. Will you state that?

A. No sir, I am not familiar with it. I was only interested with them in the business that I did myself with them. I did not know the magnitude of their business.

Q. I think that I did ask you the extent of the business that you have done through the Board of Trade houses in the past years? A. Yes sir, I have testified—

Q. If I didn't ask you that, will you state?

A. You did ask me and I testified I have done business amounting to hundreds of millions of bushels.

Q. Mr. Christie, do you know what a scalping business is as conducted on the Chicago Board of Trade?

Mr. Robbins: Wait a minute. That I object to. You try to show that he has been on the Board of Trade.

Mr. Jenks: I asked him if he knows.

Mr. Robbins: Yes, but that is not sufficient, ask him if he knows, and then he may say he does.

The Master: You should confine this witness, Mr. Jenks, to what the members did.

Mr. Jenks: I will find out first whether he knows.

The Master: He may answer the question yes or no.

A. Yes sir.

733 Mr. Jenks: Q. You may state whether you have seen any of it done on the floor of the Exchange room in Chicago?

A. A man could not tell from observation whether a man was scalping or speculating or hedging. The transactions are all alike.

Q. Then answer the question? A. No sir, I couldn't tell.

Q. Is scalping done anywhere except on the floor of the Board? A. Not as between Board of Trade members.

Q. Do you know whether there is any such thing as scalping by customers of members of the Board?
A. Well, hardly, what we would call scalping.

Mr. Jenks: I think I am about through with this witness. I think if we adjourn now until two, I can close within a very few minutes after two.
Mr. Robbins: I don't insist on your closing. I will go on and cross-examine a while.
Mr. Jenks: I reserve my right to ask some more questions if I find there is something else that this witness knows about.
Mr. Robbins: That is you close your direct with the right if you have omitted anything, to open it up after dinner?
The Master: Yes.

Cross-Examination

By Mr. Robbins:

Q. Mr. Christie, how long were you connected with the Christie-Street Commission Company of Kansas City?
A. From the day of its birth to the day of its death, I don't remember how long.
Q. How many years? A. Something over three years.
Q. It was succeeded by the present company of which you are the head, the Christie Commission Company, was it not?
A. Yes sir, the Christie Grain & Stock Company.
734 Q. Christie Grain & Stock Company. Is the Christie-Street Commission Company the same Company that had a litigation in this County that was decided by Judge Tuley and subsequently by the Appellate Court?

Mr. Jenks: I will object to that as immaterial and not a proper subject of cross-examination.
The Master: The objection to that question is overruled.

A. Yes sir.
Mr. Robbins: Q. Judge Tuley and the Appellate Court decided that the Christie-Street Commission Company was a bucket shop, didn't it?

Mr. Jenks: I object.
The Master: Sustained.
Mr. Robbins: On what ground?
Mr. Jenks: What they have decided is a matter of court record, isn't it?
Mr. Robbins: No, we are entitled to ask the witness on cross-examination. If you go into the matter on direct examination you have to have the record here, but not on cross-examination.
Mr. Jenks: What did I ask the witness?

Mr. Robbins: I have got the right to show this witness' relations to this litigation, and to this general subject and whether he kept a bucket shop or not, because he is testifying as to general methods. I am going to connect him with the decision.

The Master: I sustain the objection to that question.

Mr. Robbins: Q. Was, in that litigation, the question whether or not you were conducting a bucket shop one
735 of the questions decided?

Mr. Jenks: I object to that question too.

A. No, it was not myself personally, I would say in either case The Christie-Street Commission Company was a corporation.

Mr. Robbins: Q. Well, was the question whether the Christie-Street Commission Company was a bucket shop one of the issues in that case? A. Yes sir.

Mr. Jenks: I object to that question, and I object to his answering any questions about court proceedings that were not gone into on the direct examination.

The Master: I think you have connected this gentleman with that Company. Now if you desire to show what happened in any suit in which that Company was a party, you can do so by proper means. I do not consider this to be the proper means.

Mr. Robbins: What?

The Master: I do not consider cross-examining this witness proper means of showing what was done in regard to the corporation in any other suit. You may as to himself personally, but not as to the corporation.

Mr. Robbins: Q. You are President of the Christie-Street Commission Company? A. Yes sir.

Q. And have been during the whole time of its existence?

A. Yes sir.

Q. And had charge of its affairs? A. Yes sir.

Q. Now what was the business of the Christie-Street Commission Company?

Mr. Jenks: I object.

The Master: He may answer that.

Mr. Jenks: I didn't ask him that at all.

736 A. About the same as the business done on the Chicago Board of Trade?

Mr. Robbins: I ask that the answer be stricken out.

The Master: That is a question of opinion. Just answer what was their business.

A. Buying and selling grain and provisions stocks and bonds for immediate and future delivery.

Mr. Robbins: Was not their business that of conducting a bucket shop? A. No sir.

Q. Was not that so decided in the case by Judge Tuley and the Appellate Court?

Mr. Jenks: I would just as leave you would say yes.

A. It certainly was.

Mr. Robbins: Q. The business of the Christie-Street Commission Company was located in Kansas City was it?

A. Yes sir.

Q. Its head office? A. Yes sir.

Q. This Christie Grain & Stock Company is the present company of which you are the President? A. Yes sir.

Q. Is that doing business in Kansas City? A. Yes sir.

Q. At the same place that the Christie-Street Commission Company did? A. Yes sir.

Q. In the same office?

A. The Christie-Street Commission Company went out of business and the Christie Grain & Stock Company was a new corporation formed that took the old Christie-Street Company's office.

Q. And business?

A. No, not its business. The Christie-Street Commission Company went out of business.

Q. What time intervened between the going out of business by the one and the taking up of business by the other?

737 Mr. Jenks: I object to the question as immaterial and not cross-examination.

The Master: Objection overruled.

A. What time intervened?

Mr. Robbins: Yes?

A. Well, there couldn't be no time about it. The Christie-Street Commission Company went out of business and liquidated its affairs. The Christie Grain & Stock Company started a new business.

Mr. Robbins: Read the question.

(Question read.)

A. There was no time intervened in the sense that one absolutely quite; the Chritsie-Street Commission Company continued its business until its affairs were wound up.

Q. What time intervened between the ceasing by its employes to work for the Christie-Street Commission Company and their employment by the Christie Grain & Stock Company?

Mr. Jenks: He said there was no time.

The Master: Answer the question?

A. The Christie-Street Commission Company were—their employes were all employed by the new company, and attended to the affairs of both companies until the Christie-Street Company's matters were all settled up.

Mr. Robbins: Q. So that so far as the customers are concerned, the business was continuous was it not?

A. Oh, no, the customers all transferred their accounts or settled them up with the Christie-Street Commission Company and if they chose they opened a new account with the new firm.

Q. But the business went right on in this same office without any interruption did it not?

738 A. Not the business of the Christie-Street Commission Company, did not.

Q. The business of so-called dealing in grain and stock did, did it not?

A. No, not the so-called dealing, the actual dealing.

Q. Well, the actual dealing in grain and stock went right on without interruption?

A. When Judge Tuley said the Christie-Street Commission Company was a bucket shop, I said, "We will put the Christie-Street Commission Company out of business and we will start a house and will eliminate from the new house any transactions that Judge Tuley characterized as bucket shopping and which caused him to call it a bucket shop." The new firm of Christie Grain & Stock Company has done business along those lines, not like the old business.

Q. Along what lines?

A. Along the lines suggested by Judge Tuley in his criticism.

Q. Well, let us see. You have a number of wires running around the country have you, to different points?

A. Tuley in his decision said that we—

Mr. Jenks: I object to this as not proper cross-examination.

The Master: Yes, I think if you go into the subject of proving this Christie-Commission Company a bucket shop, we would never find an end to the examination.

Mr. Robbins: This witness says, "Along the same lines." He volunteers that and I want to follow it up.

The Master: I think it would be immaterial. It is a corporation is it?

A. Yes sir.

Mr. Robbins: You are the principal member of it?

A. I am the President of it.

739 Q. Does the Christie-Street Commission Company make its transactions with its own customers, or does it place the transactions on the exchange?

Mr. Jenks: I object to the question.

The Master: Objection sustained.

Mr. Robbins: I mean the Christie Grain & Stock Company?

Mr. Jenks: The same objection.

Mr. Robbins: It is a very funny ruling, it seems to me, that a witness can be put on the stand and I cannot inquire into his business.

The Master: You are inquiring into the business of a corporation and trying to show it is a bucket shop.

Mr. Robbins: Q. How much of the Christie-Stock and Grain Company do you own?

Mr. Jenks: I object to that as immaterial and not cross-examination.

The Master: It occurs to me that you are trying to prove the defendant here is a bucket shop; that is what it amounts to. In proving this gentleman's corporation is a bucket shop you might get off your main issue entirely.

Mr. Robbins: The credibility of a witness is determined by his associations. I never knew you could not go into the associations or business of a witness.

The Master: You have gone into it.

Mr. Robbins: No, I have not. I am trying to show what his business is. He cannot shut out the relation of his business to the world by showing he is a member of a corporation. I have got just as much right to cross-examine to ascertain what he is and what he does, where he is doing business as a corpo-
740 ration as I have where he is doing business as an individual.

The Master: You have already shown he was the President of the Christie-Street Commission Company, which was declared a bucket shop, and that thereupon he closed the company out and started in this new business.

Mr. Robbins: No, he says the business is different; instead of saying he started another Company in the same business he says he has gone into different lines. I ask now what different line, then I am shut off.

The Master: Is it your purpose just to show the method of dealing?

Mr. Robbins: No, I want to show he is practically in the same kind of business the other company was.

Mr. Jenks: Do you think you can show that on cross-examination when nothing was said about it on the direct-examination?

Mr. Robbins: Why certainly.

Mr. Jenks: Wait a minute, let's see whether we can try two cases in one or not. Now suppose it be a fact that Mr. Robbins has a case in Kansas City against that corporation,—this case is one that is pending in Cincinnati; there would be a witness on the stand to testify as to the transactions with the Chicago Board of Trade; can my friend Robbins drop the Chicago Board of Trade and go and try his Kansas City case, and examine all his witnesses where he has said nothing about the business of the Kansas City house, and prove here in the absence of the Kansas City corporation that the President of that corporation conducts a business there that is contrary to law, and all this, that and the other? The Kansas City corpora-
741 tion has a right to be heard upon that subject, and Mr. Robbins has no right to cross-examine upon subjects not brought out in the direct examination, and this subject was not.

The Master: This is on the theory that he is attacking the credibility of this witness.

Mr. Robbins: Yes.

Mr. Jenks: But suppose he attacks the credibility of the witness by showing that some corporation is engaged in an illegal business, does that attack the credibility of the witness?

The Master: I am with you, Mr. Jenks, that this would be going into almost innumerable issues.

Mr. Jenks: It is going that way. Just one other suggestion I want to make. We will suppose that Mr. Christie was doing business on the Chicago Board of Trade, just exactly as Board of Trade members do their business there, and Brother Robbins succeeds in showing that, then can he insist that that sort of business is an attack upon the credibility of the witness as a man of truth? He is not after anything that will attack the credibility of the witness. He is trying to show that some line of business is claimed by the Chicago Board of Trade to be a bucket shop business. That is what he is trying to show. Now, there is not a man in the country, I don't care what sort of business he is doing, that does not claim his business is just as legitimate as any business done on the Chicago Board of Trade, and I don't want any rules of evidence suspended in this case. The cross-examination of a witness should be along the lines of the subject-matter of the direct examination. Now I insist, and insist strongly that he has no right to show here, in the absence of the Kansas City corporation, and in the
742 absence of its being represented here, anything by this witness in cross-examination which would tend to convict that Kansas City corporation of any illegal transactions.

Mr. Robbins: That is a privilege of the witness, not of outside—foreigners, for the witness would soon be assuming that they have gone out, which he cannot do.

Mr. Jenks: Which he can do if you ask him direct questions.

Mr. Robbins: Let him do that if he wants to, but the lawyer does not have the right to. Now, here is a man who comes on and undertakes to give the methods of the Board of Trade and his views of this, that and the other, and it certainly is material in fixing the amount of weight and credit to be given to his evidence to know whether he is engaged in the same class of business as the complainant, whether he is suffering from the same rules as the Board of Trade, from the same inhibition of quotations.

The Master: You can show his occasion to know the methods of the Board of Trade; the way they conduct business, their method of conducting business. If permitted to go into that it would make more than one issue.

Mr. Robbins: The limits are very clear. I could not put any witnesses on the stand after this one on that issue, but I can follow this witness in order to show what kind of business he is in. The court in Cincinnati don't know who he is. We know perhaps here, but the court in Cincinnati don't know anything about what he is doing. Now, here is another ground on which the questions are admissable. The direct examination has brought out, I don't know for what purpose, it was brought out that this man applied to the Chicago Board of Trade
743 for quotations and was turned down, the theory being that the Board of Trade is turning down people frequently on these quotations. Now, cannot I show what he is, what his business is, and why he was turned down, on cross-examination?

The Master: You can show any dealings he had with the Board of Trade.

Mr. Robbins: No, the nature of his business, so as to justify the turning of him down on quotations.

Mr. Jenks: You had no legal right to turn him down anyhow. That is a question of law.

The Master: We will come back to this other point. Ask your question and I will pass on it.

(Last question read as follows:) "Q. How much of the Christie Stock & Grain Company do you own?"

A. Shall I answer that question?

Q. Yes? A. One-half.

Mr. Robbins: Q. Who controls the business of the Christie-Street Commission Company?

Mr. Jenks: I object to that.

Mr. Robbins: Q. That is, manages it? Who is the active managing man of that Company?

A. The Christie-Street Commission Company is out of business.

Q. The Christie Grain & Stock Company?

Mr. Jenks: I object.

The Master: Objection overruled.

A. Merely the Board of Directors.

Mr. Robbins: Q. Who is the managing man in that Company?

Mr. Jenks: I object to that.

The Master: Overruled.

Mr. Robbins: Q. Aren't you?

744 A. Well, I hardly know. Mr. Michael the Vice-President is the managing man at present.

Q. Who is the man of supreme authority in that Company?

Mr. Jenks: I object to that question.

The Master: Overruled.

A. There is no man in supreme authority in the corporation.

Mr. Robbins: Q. Do you give your attention to the business at all times? A. No, sir.

Q. You are present when in Kansas City in your office during business hours?

A. Sometimes but not always by any means.

Q. Do you have any connection with the active management of that business?

A. Not directly; I have no clerical work in the office.

Q. That is not what I am asking you? Are you connected with the active management of that business as a directing man?

A. Well, that depends on circumstances; if I am there perhaps I would be, and if I am not there I am not.

Q. When you are in the city you are the principal man in the business, are you not? A. Well, not of necessity, no.

Q. Will you answer the question?

A. Well, as a matter of fact, Mr. Michael the Vice-President of the Company has complete authority to manage its affairs and does manage its affairs.

Q. Don't you participate in the management?

A. I do if I want to; I don't if—

Q. Well, as a matter of fact? A. Well, very rarely.

Q. How much of the time do you spend there?

A. Perhaps two hours a day or an hour and a half.

Q. Two hours every day?

A. No, not every day because I am away from the city a good deal of the time.

Q. Two hours a day when you are in the city?

A. Possibly that.

743 Q. What do you do when you are there?

A. Not much of anything; simply ornamental.

And thereupon at 12:50 o'clock P. M., December 2nd, 1901, an adjournment was taken until two o'clock P. M. of the same day.

Two o'clock P. M., December 2nd, 1901, parties met pursuant to adjournment.

The cross-examination of Charles C. Christie was resumed by Mr. Robbins as follows:

Q. Has the Board of Trade now pending in Kansas City a suit against your company in which it charges you with being a bucket shop, and in which it seeks to enjoin you from using its quotations?

Mr. Jenks: I object to that as not cross-examination.

The Master: Overruled.

A. Yes sir.

Mr. Robbins: Q. That suit is still pending, is it?

Mr. Jenks: I object to that as being included in the former question.

Mr. Robbins: Q. Is that a suit of the same character as this one in Cincinnati?

Mr. Jenks: I object to that question as calling for a conclusion of the witness as to the character of two different suits.

The Master: Objection overruled.

A. I don't know.

Mr. Robbins: How long have you been here in Chicago?

A. This time?

Q. Yes? A. A week or more.

Q. How many days have you been in attendance on this examination?

746 A. Ever since the day I was subpoenaed.

Q. Where were you subpoenaed?

A. In this room, I don't know—not subpoenaed, sworn.

Q. Sworn? A. Yes.

Q. You have been here practically ever since this examination has been going on, have you not? A I think not.

Q. Who is your lawyer in your Kansas City suit?

A. Messrs. Harkless, O'Grady and Crysler, and Mr. Jenks.

Q. Has Mr. Harkless been in attendance on this hearing most of the time? A. No sir.

Q. Has he been here all the time that you have been here?

A. No, sir.

Q. How many days has he been in attendance on this suit and the taking of this evidence?

A. You had better ask him. I don't know.

Q. While you were here? A. I think two days.

Q. Two days. Is it by your direction that he is in attendance here? A. By my direction?

Q. Yes?

A. Well, it is by an understanding that the testimony in this case we can use in our case in Kansas City.

Q. Who has any such understanding? A. I have.

Q. With whom? A. With Mr. Harkless and with you.

Q. You have no such understanding with me at all sir.

A. I have such an understanding.

Q. No sir, you have no such understanding or agreement whatever with me?

A. You gave me to understand that we could use this testimony in that case.

Q. I did not give you any such understanding?

A. I insist you did.

Q. Mr. Harkless is in attendance here is he now?

747 Mr. Jenks: Now, will you suspend here and let me put Mr. McHenry on?

Mr. Robbins: No, not now. Let's finish this witness. Mr. McHenry has said he would be here all the afternoon.

Mr. Jenks: I thought Mr. Robbins, that you said this forenoon that when Mr. McHenry came in that we could suspend and put him on?

Mr. Robbins: I did this forenoon, because I knew Mr. McHenry would be busy this forenoon, but this afternoon he is not busy.

Mr. Jenks: Then the agreements you make in the morning are not to be kept in the afternoon?

The Master: Gentlemen, let us go on.

(Question read.)

A. Yes, sir.

Q. What have you had to do with bringing witnesses to testify here? A. Nothing whatever.

Q. A Mr. French that testified here, were you instrumental in having him come here? A. Not directly.

Q. Were you indirectly? A. Perhaps so.

Q. How?

A. I think Mr. Harkless perhaps told him it might be of some benefit to me if he would testify in this case. I did not see Mr. French about the matter at all until he was in Chicago.

Q. What is that?

A. I did not see Mr. French about the matter at all until he was here in Chicago.

Q. Have you done anything to get other witnesses here besides Mr. French? A. I don't think that I have.

Q. Have you spoken to anybody about testifying here except Mr. French? A. I think not.

748 Q. Do you know of any combination of bucket shop men of which you are a member to fight this class of lawsuits that are being instituted by the Board of Trade?

A. No sir.

Q. Do you know of any combination of any kind that has in view the resistance of this class of suits?

A. Not of my own knowledge.

Q. What do you know about it?

A. I don't know anything about it, except that I have heard there was such an association.

Q. Where did you hear that?

A. Well, I heard it in a letter I got from a man in New York, stating that they were going to form such an association.

Q. For what purpose?

A. Well, he did not say for what purpose; he said for the benefit of non-Board of Trade members.

Q. Did he ask you to join it? A. Yes sir.

Q. What did you do? A. I declined to join it.

Q. Have you then testified in this case under the expectation that your evidence in this case could be used in the case against you? A. Yes sir; I still hope that it can.

Q. Do you know whether there are any rules of the Board of Trade governing any question of off-setting or ringing and the question of clearing house?

A. Do I know if there are such rules?

Q. Yes? A. Yes sir.

Q. There are rules governing that subject are there not?

A. Yes sir.

Q. Made by the Board of Trade? A. Yes sir.

Q. What have you had to do with this question of off-setting? A. What have I had to do with it?

Q. Yes? A. How do you mean?

Q. Have you personally ever had anything to do with
749 closing any trades by ringing or settlement under these rules of the Board of Trade?

A. Not on the Board of Trade. I have had very much to do with settling them off the Board of Trade.

Q. I mean settlement of trades between members on the Board of Trade on what you call rings? A. Certainly not.

Q. You base your entire knowledge on the fact that your business with Worthington, and Counselman & Day had brought you in contact with that part of the business?

A. No, sir.

Q. Did your connection with either of those firms or any other firm, bring you in personal relation to or contact with the clearing house system of the Chicago Board of Trade?

A. No sir.

Q. Do you from your own knowledge know anything about this closing up by what you call ringing of the clearing house business?

A. I know it by the rules of the Board of Trade that it must be just as I stated; cannot be any other way.

Q. Is the only knowledge you have of it derived from the rules of the Board of Trade? A. Yes sir.

Mr. Robbins: Now I move to strike out all the witness has said on the subject of closing contracts by rings and clearing house, because now upon cross-examination it appears he knows nothing about it except what the rules show; in other words, he has testified as to the rules and nothing else, when the objection was made at the time that he could not testify as to what the rules contained.

Mr. Jenks: I object to striking it out.

The Master: Q. Has counsel stated the extent of your knowledge correctly? A. I don't know that the—

750 Q. Has counsel stated the extent of your knowledge?

A. He has asked me if I at present had anything to do with making those rings and I answered no.

Q. No, the last proposition is, do you know anything about it except the rules of the Board of Trade provide just the manner you have described?

A. I know about it from every member of the Board of Trade I have had anything to do with; I know it is the universal practice over there.

Mr. Robbins: He knows it by the rules of the Board.

The Witness: I know the clearing house has no other function except to cancel these trades. That is what it is for, and nothing else on earth.

Mr. Robbins: I move to strike that out.

Mr. Jenks: I object to striking it out.

The Master: Oh, the evidence as it stands, it may be stricken out.

Mr. Robbins: What is that?

The Master: It may be stricken out.

Mr. Robbins: That is the last answer and also the testimony on Direct as to ringing and clearing house?

The Master: Exactly, if the only information he has is the rules. The rules are the best evidence.

Mr. Robbins: If counsel would introduce the rules he would do better. Is there any doubt of the fact that that is out of the record?

The Master: No.

Mr. Robbins: Q. You never in any way participated in the making of a single settlement by this ringing system did you?

A. I don't know but what I did, sir. Do you mean that any of my trades were rung?

Mr. Robbins: Read the question.

(Question read.)

A. Do you mean if I had settling clerks? Certainly not.

Q. Did you ever see one of those trades rung up?

A. Did I ever see it rung up?

Q. Yes?

A. I don't know how you would see it. What would you see?

Q. Did you ever personally participate in the making of one of these settlements? A. No, sir, I told you I did not.

Q. Did you ever see it done?

A. I have seen a lot of clerks running around settling in the hall of the exchange every day.

Q. Did you ever follow them closely enough to see what they were doing in respect to any one particular trade?

A. No, I did not have to because I knew what they were doing.

Q. Did you ever personally have anything to do with the clearing house? A. Certainly not.

Q. When you define stop orders you were speaking of stop orders in connection with the Board of Trade, were you?

A. Yes sir.

Q. On the Board of Trade, if a stop order is sent in it is executed on the open Exchange, is it not?

A. Presumed to be. I don't know what they do over there. You just disqualified me by saying, making me say I did not know. It is presumed to be.

Q. You testified as to these stop orders, and I am asking you about them. Suppose the market—suppose the stop order should be at seventy-four cents and the market should close at seventy-four and a half and open the next morning at 73 and ½? A. Yes.

751 Q. What would become of that stop order?

A. They would close it the same way I would in my office, by the first market that was made that morning.

Q. In the same way that you would in your office?

A. Yes sir.

Q. Let us see if I understand how you would do it in your office. Do you keep what are called sheets, margin sheets?

A. No sir.

Q. Don't keep any sheets? A. Don't keep any sheets.

Q. What form or system do you follow to keep track of the stop orders in your office?

A The same form they do over on the Board of Trade.

Q. Define it?

A. Keep a memorandum of them in a book or on a paper, a memorandum.

Q. Well, showing the price at which the order is stopped on each trade? A. Yes sir.

Q. When do you execute such a stop order?

A. Whenever the market gets to that limit.

Q. When the market reaches—if the stop order was seventy-four and the market would reach that limit, you would close out at seventy-four would you? A. Yes sir.

Q. How would you know when the market had reached seventy-four?

A. By the quotation made by the Chicago Board of Trade.

Q. By the quotation. Do you have those quotations in your office? A. Yes sir, part of them.

Q. So when the quotation of the Chicago Board of Trade, as appearing in your office, reaches seventy-four, then you would close the trade out at 74 would you?

A. Yes, if it was based on Chicago, I would.

Q. Whether your customer was there or not?

A. Yes sir, I would if it was an open order. I would not if it was not.

752 Q. Then—

A. If the order was in force of course I would execute it the same as it was over on this Board; if it was not in force I would not execute it.

Q. What would you do to execute it?

A. I would simply cancel it in the same way they cancel trades with me.

Q. Then you would not go upon any exchange to execute it?

A. No, neither would your commission men down here do anything with me except send me a memorandum, putting one trade against the other.

Q. How would you cancel it?

A. Simply by ordering the clerks to enter the trade up in the book against that man's account.

Q. Now who does that in your office?

A. Oh, four or five different clerks, whoever works on those books.

Q. They determine when to do that by looking at the market quotations on the blackboard, do they? A. Yes sir.

Q. The understanding with your customers is that that they may be done when the market quotations reach the stop order price, is it?

A. No, it is not my understanding at all that it may be done; they cannot place any trade with me unless that market is made in Chicago; that may depend on the market. They can make a trade with me and close at a certain price.

Q. No, but the understanding of your customers is when the market in Chicago reaches that stop order price that trade is to be closed?

A. If the market is made in Chicago that is true, it is closed at that price, but if that price is not made in Chicago, and it comes half a cent lower, it is closed at the lower price, not at seventy-four at all.

Q. But it is closed on the Chicago market?

A. Closed on the basis of the Chicago market.

Q. On the basis of the Chicago market?

753 A. If the trade is made on the basis of the Chicago market.

Q. Is this the understanding with your customers at the time your trades are made? A. What?

Q. That they may be closed in this way?

A. There is no understanding made with them whatever, except that they give me an order to buy or sell and agree to buy or sell from me and agree to protect it until the trade is closed. There is no understanding that a man can make with me that I cannot make with any member of the Chicago Board of Trade regarding the handling of orders.

Q. Are all your transactions made at the prices prevailing in Chicago at the time? A. Are they made at the prices?

Q. Yes?

A. Why no; they may be made on some other market.

Q. That is, they are made on Chicago market prices, or made on the prices prevailing at the time?

A. The Chicago prices taken as a basis for the transaction the same as it is taken for a basis in every other grain transaction made in the west. The prices at which my trades are closed are not Chicago prices at all.

Q. Well, if the prices in Kansas City were seventy-three cents in wheat and the price in Chicago were seventy-six cents, and the customers came into your office to buy wheat, what price would you take?

A. Might take either price, whichever he told me he wanted to trade on, or that we agreed on.

Q. You frequently do take the Chicago price, do you?

A. Yes sir.

Q. Carry on a large business based on Chicago price?

A. Yes sir.

Q. What is the volume of your business carried on the Chicago price in grain, in a year?

A. Well, I don't know, is quite large.

Q. Approximately?

Mr. Jenks: I object to the question as not proper cross-examination.

754 The Master: As I understand it, it is confined to his business with the Chicago Board of Trade? Objection overruled.

A. Confine my business with the Chicago Board of Trade?

The Master: That is the question.

Mr. Jenks: It is an entirely different thing.

Mr. Robbins: The volume of his business based on the Chicago market.

The Master: He may answer.

A. Well, I wouldn't answer with positive accuracy; I don't know.

Q. Give me your best impression on that?

A. Well, it is pretty hard to. I will give it to you when you come down and examine me in Kansas City. I don't like to state from memory. My business is so mixed up, so many different things and so many different markets.

Q. Have you in the last year—I think you stated on the direct examination, you had one customer demanded delivery of ribs. Is that the only person you had demand a delivery of any property in the last year from you? A. In Chicago?

Q. In the class of transactions that are based on the Chicago market?

A. I have received and delivered on contracts made in my office, a larger per cent of wheat and corn than any house in Chicago has on the same class of contracts during the last year.

Q. I don't think that is responsive. Do you understand the question?

A. Yes sir, I think I do. Do you say that that was an improper answer?

The Master: No, your answer is responsive to the question.

A. Perhaps I did not understand the question.

755 The Master: Please repeat the last question.

(Question read.)

A. I misunderstood the question. You ask me now if I had anybody demand the delivery of property on contracts I had on this Board of Trade?

Mr. Robbins: On the contracts with your customers that were based on the Chicago Board of Trade?

The Master: Is that the only one, that is his question.

A. That was on the Chicago market. Now he asks me a question if I have received or delivered anything in my business and my answer is yes.

The Master: Repeat the question again.

(Question read.)

Q. You said one customer demanded delivery of ribs?
A. Yes sir.
Q. That you gave him. This is along that line?
A. I was testifying entirely to my business with the Chicago Board of Trade. I testified that in twenty years I had only had one delivery on the Chicago Board of Trade.

Mr. Jenks: Q. And wasn't that in the last year?
A. No, that was several years ago.

The Master: Are you confining that to the Chicago Board of Trade, your question?

Mr. Robbins: I am confining it to his business with his customers that is based upon—

The Master: Then you promised your question upon an erroneous statement of facts. He did not say all his business. He said his Board of Trade business.

Mr. Robbins: No, he said—

756 Mr. Jenks: I object to Mr. Robbins undertaking to quote what the witness said, because he don't remember. He fixed that other transaction within the past year, when it was not.

Mr. Robbins: The witness said he made a good many deliveries, he could not give their number, which were opened and closed on the Chicago market prices and I am confining my inquiries to that class of his business, and I ask him whether in that class of his business he has ever had any customers that demanded delivery except the one he spoke of in ribs.

The Master: Confine it to that class of business. Answer.

A. I understand now that refers to my business with this Chicago Board of Trade.

Mr. Robbins: No, with your customers.

The Master: That was not his answer in the first place. He did not say with all his customers.

Mr. Robbins: The witness thinks I am asking of his business on the Board of Trade. I am asking with his business with his customers, based on Chicago prices?

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A. My answer is during the year I have received and delivered a good deal of wheat and corn on contracts made with my customers myself, hundreds of thousands of bushels.

Mr. Robbins: Let us get the Master here.

A. (Continuing.) I am receiving and delivering wheat and corn every day on these contracts that I make with my customers.

Mr. Robbins: I move to strike out the answer and ask the Master to direct him to answer the question. He has made the same answer that he made once before.

757 The Witness: I want to say to the Master that I am only answering because I don't understand it.

The Master: Repeat the question and answer that were made.

(Question and answer read.)

Mr. Robbins: The witness has testified that only part of his business is based upon Chicago market, that his trades are based on other markets, and the question is confined to Chicago markets.

The Master: Limit your answer Mr. Witness, to trades with customers which are based upon Chicago prices.

Mr. Robbins: Now, I would like a ruling on my motion to strike out.

The Master: It is stricken out.

The Witness: Then there isn't any answer to it.

The Master: Now commence now and give your answer with reference only to your deals with customers based upon Chicago prices?

A. Well, I would have to qualify that, to see whether he wants to strike that out or not. I make a contract based on any market that my customer pleases, and the contract de-

any

liverable in Kansas City; I don't make contracts deliverable in Chicago or anywhere but Kansas City on grain. Now the

Chicago price may be the basis of making the trade, but when that trade is carried out with a delivery, they deliver it in Kansas City at the difference in price between the Chicago market and the Kansas City market on the day of delivery. Now if I answer him that trades were made based on Chicago price, I don't know whether they were based on Chicago
758 prices originally, or whether they were on New York, or whether they were on Boston.

The Master: Then you cannot distinguish between the two classes of trades?

A. No, I cannot tell where the trade finally lands; I couldn't now.

Mr. Robbins: Your trades with your customers based on Chicago prices cover not only corn and other grains, but pork and ribs and things of that kind; do they? A. Yes, sir.

Q. Have you made any deliveries to your customers or received any deliveries from your customers in contract for provisions or short ribs which were based upon Chicago prices?

A. I think not; I bought some provisions over here with an idea of perhaps helping out on that, to see whether they gave them to me.

Q. You do know—

Mr. Jenks: Wait one minute; he said "over here." I don't know where "over here" is?

A. Well, on the Chicago Board of Trade.

Mr. Robbins: You do know that for about two years ending in 1892 the Board of Trade did not give its quotations to any telegraph company or send them out itself, do you not?

A. I think I know it, yes. I know that they didn't send them out, at least I understood they did not.

Q. Now from August 1st, 1900, to April 1st, 1901, the Chicago Board of Trade did not give its quotations to any telegraph company that sent them out of Chicago or Milwaukee, did it?

A. My understanding is that they only furnished the Western Union with such quotations as they were compelled to during that time.

Q. What do you mean?

A. The telegraph company did send their quotations over the wires during this whole period, but it was only for people who had the Board of Trade tied up with injunctions and got quotations in that way.

Q. Mr. Christie, do you know of any telegraph com-
759 pany other than the Cleveland Telegraph Company and Milwaukee Telegraph Company that received from the Chicago Board of Trade and distributed to a single person the

quotations of the Chicago Board of Trade between August 1st, 1900, and April 1st 1901? A. Only in the way I have stated.

Q. Do you mean to say the Western Union Telegraph Company sent out any quotations from the Chicago Board of Trade day

from the 1st of August, 1900, to the 1st of April, 1901?

A. I don't pretend to say they did anything they didn't do with a perfect understanding with your people and under the law. My understanding is they sent quotations to the house in Milwaukee and that they sent the quotations to Sid McHie. Whether they did or not, I don't know.

Q. You are mistaken about that?

A. Well, then, I am mistaken.

Q. That was the Cleveland Telegraph Company?

A. Well, I thought it was the Western Union.

Q. Now during those periods, did the grain trade of the country go on as usual for the two years and the seven months?

A. I think it did, I don't remember. I don't think that they stopped raising grain because the Board of Trade would not let them have quotations.

Q. It was raised and sold, wasn't it, just about the same as it was before? A. I think it must have been.

Q. You don't know whether there was any cash grain sold in the wheat pits or not, do you?

A. I think I do know, there is not.

Q. How many times have you been in the wheat pits in the last five years? Let's see what you know about it?

A. I don't know that I have seen them at all in the last five years.

Q. Now then, do you know in the last five years whether cash grain is sold in the wheat pit or not?

A. If there had been any change in the general affairs or the conduct of business on the Board of Trade it would have been made public. The Board of Trade business has
760 been done in pretty much the same manner for the last twenty years.

Q. That is all you know about it?

A. I know a good deal about it, because I have always been trading over there.

Q. Go back beyond the twenty years. How much time were you present in the wheat pit or near the wheat pit so as to tell what was traded in?

A. I did not testify as to the amounts that were traded in. I testified that there was nothing much done in the wheat pits except to buy and sell for future delivery.

Q. How much time have you spent there to be able to determine that?

A. Well, in my whole life time, several days.

Q. In your whole life time all of several days?
A. Yes, perhaps a month, two months.
Q. Did you ever make any trades there?
A. No, but I have stood right at the elbow of the fellow that did.
Q. Were you ever there on the floor of the Board of Trade except under a visitor's card? A. No sir.
Q. Never done any business there yourself at all?
A. No sir, never a broker on the board that I know of.
Q. When you were there, you were not able to tell from what went on there whether the trading on any particular man's trade was a scalp or a hedge or any other kind of a trade, were you?
A. No, I could tell if I noticed it whether it was a trade for future delivery.
Q. But you could not distinguish between what is called scalping and hedging, could you, there?
A. Certainly not; there isn't any difference. They are all alike.
Q. They are all made in the same way? A. Yes sir.
Q. All these trades in the wheat pit are made in the same way? A. Yes sir, I think so.
Q. By standing there you cannot tell whether a man intends to scalp or whether he intends to deliver, by the way the trade is made?
A. You are willing for me to tell; you know they don't.

Mr. Robbins: Read the question. (Question read.)

A. I can tell that he does not intend to deliver.
761 He never intends to deliver.
Q. By the way the trade is made, any particular trade, can you tell whether the man who makes it intends to scalp or deliver; is there anything in the manner in which it is made that enables you to tell?
A. There is something in the conduct of the business.

Mr. Robbins: I will ask to have the witness answer my question.

The Master: Mr. Christie, is there anything visible or tangible by which you can tell the intention of the parties by watching their demeanor?
A. If the Master please—
The Master: That is his question.
A. You say, is there anything I can tell by him in the pit? I can give a logical reason why I know it is outside of the pit.

Mr. Robbins: I don't call for your logical deduction.
A. It is a conclusion you would be forced to accept.

Q. I am not after conclusions. I want to know from what you saw in the pit?

A. There isn't anything in the pit except a lot of fellows buying and selling options on wheat for future delivery. That is all you can see in the pit.

Mr. Robbins: Is there anything to enable anyone watching them to tell whether the man who makes the trade there has the wheat on hand or not?

A. No, but there is plenty in the conduct and handling of the cash business to tell that he never intends to handle the wheat.

Mr. Robbins: I move to strike that out.

The Master: The last may be stricken out as not responsive.

Mr Robbins: This talk which you had with Mr. Warren and myself followed that decision of Judge Tuley enjoining you from receiving and the Western Union Telegraph Company from delivering you the quotations of the Chicago Board of Trade on the ground that you were a bucket shop, did it not?

A. The conversation we had followed that?

762 Q. Yes?

A. Yes sir, not that I was a bucket shop, but that the Christie-Street Commission Company was a bucket shop.

Q. Do you know of any saloon or hotels in which the quotations of the Chicago Board of Trade have been--continuous quotations of the Chicago Board of Trade have been posted or received since the first day of August, 1900?

A. Well, I have just come out of one that purports to h[illegible] them, the Great Northern over here. I was over there at noon looking at it.

Q. Was that the hotel or somebody's grain office?

A. It is right in the lobby of the hotel right up in the ..... side of the office.

Q. In the lobby of the hotel? A. Yes sir.

Q. Where else? A. I don't know of anywhere else.

Q. At what other hotel or saloon have you ever seen the Chicago quotations since August 1st, 1900?

A. I don't know that I have seen them since August 1st, 1900 in Chicago.

Q. You do say you saw them in the lobby of the Great Northern Hotel? A. Yes sir, at noon, I say.

Q. You said also that you were getting quotations?

A. Yes sir.

Q. How are you getting the quotations?

A. All sorts of ways.

Q. Well describe them?

A. Well, over the telephone, by messenger boys, by personal observation by wire sometimes.

Q. Do you have a wire devoted to the Chicago quotations?

A. No sir.

Q. What? A. No sir.

Q. You never made any application, written application, for the Chicago Board of Trade quotations, to the telegraph Company, did you? A. Yes I did.

Q. In the form they have prescribed by the contract between the Board of Trade and the Western Union Telegraph Company?

A. I don't know anything about the form. I made an oral application to them and they notified me that they had
763 referred it to the Chicago Board of Trade, and the next thing I heard was the injunction suit of the Chicago Board of Trade to restrain me from using them instead of getting an answer in regard to it.

Q. Look at the letter I now hand you and see if that refreshes your recollection as to whether you refused to sign the application in the form prescribed in the contract between the Board of Trade and the Western Union Telegraph Company?

A. (Reading.) R. C. Clowry, Vice-President and General Superintendent—

Q. You needn't read it out loud.

Mr. Jenks: I want it.

Mr. Robbins: I don't want in the record, that is all, don't want to encumber the record with it. It is a long letter.

A. I think I ought to read this letter. I would like to read it.

Mr. Jenks: Read it? A. This is to Col. Clowry.

The Master: Just a minute. Do you wish this to go into the record?

Mr. Jenks: He don't but we do.

Mr. Robbins: I asked him to look at it to see if it refreshes his recollection.

Mr. Jenks: Let's have it in the record.

The Master: You can get it into the record on your redirect. The only question is to refresh his recollection.

A. Let me look at it a little more to see what it does say. Certainly I did refuse to sign that blank.

Mr. Robbins: You said every broker has a blackboard. You don't mean that, do you Mr. Christie?

A. Well, every broker that is very broad; every commission merchant perhaps is better.

Q. Now isn't it a fact that ninety per cent or more of the members of the Board of Trade don't have any blackboards, and that only the very large offices have them?

A. My personal acquaintance over there among the commission men is that every one of them have a blackboard;
764 I don't know one that has not. There may be some men that don't have blackboards but I don't know them. That is, I am not familiar with their offices.

Q. You undertook to state how Armour & Company for instance would make hedges. Have you ever had anything to do with Armour & Company's business?

A. I only used Armour & Company as an illustration. I did not say I knew how Armour & Company did it; I said that that was the general way of transacting that business. I have had experience in that sort of thing. I have now. I have got a hundred thousand bushels of wheat in an elevator in Kansas City. I will have it sold for future delivery in the same way I suppose Mr. Armour would make his.

Q. Have you ever had any business relations, or any relations with any of the elevator proprietors of Chicago, or had anything to do with any hedging by them or for them on the Chicago Board of Trade? A. I think not.

Q. Have you ever had any personal knowledge of how that is done by any elevator firm in Chicago?

A. No,—any personal knowledge?

Q. Yes?

A. A knowledge gained by conversations with men who did the business.

Q. You know what personal knowledge is, don't you?

A. You are holding me down to personal knowledge or whether I did the business myself?

Q. Did you ever have anything to do with hedging for any firm, elevator, firm or elevator concern on the Chicago Board of Trade, personally?

A. Yes, I have; in Kansas City I have hedged on the wheat—

Mr. Robbins: Read the question. (Question read.)

Mr. Jenks: He has answered that he has.

The Master: On the Chicago Board of Trade, that is? His answer is hardly responsive.

Mr. Robbins: I move to strike the answer out and that
765 the witness be directed to answer. Read the question.

(Question read.)

A. Does that mean an elevator concern, member of the Chicago Board of Trade, or an elevator concern hedging on the Chicago Board of Trade?

Q. It means elevator concerns in Chicago and hedging on the Chicago Board of Trade?

Mr. Jenks: I beg your pardon, it don't mean any such thing. It don't mean elevators anywhere hedging in Chicago.

Mr. Robbins: Hedging in Chicago?

A. Well, I have, yes sir.

Q. Well, now, with what concern have you hedged in Chicago? A. What concern have I hedged with? None of them.

Q. For what concern have you hedged in Chicago?

A. I have hedged wheat for Kemper & Company in Kansas City; I have hedged wheat in Chicago for myself.

Q. Are they an elevator concern?

A. Yes sir, I don't own an elevator, but I have got the wheat in the elevator, all the wheat in an elevator in Chicago, carrying it now to make the carrying charges, got it sold for future delivery, and will buy it in when the contract matures in order to make the carrying charges and have the trades rung up and cancelled and pay the difference.

Q. Now, Mr. Christie, have you ever acted for any elevator concern in Chicago in hedging on the Chicago Board of Trade?

A. I didn't say I had.

Q. Do you know anything about the way the elevator concerns in Chicago hedge on the Chicago Board of Trade from any personal knowledge of your own?

A. I know it the same way I know everything else. It is a matter of public knowledge and public interest. I know it in the same way how I know how a grocery store over here sells groceries; I know it how I know that that hotel over there runs a hotel. I know how the business of ware-
766 housing grain is run on a perfect system, and it is a matter of public knowledge; it is not a secret over on the Board of Trade. Anybody knows it that will make the effort of find it out.

Q. You said on your direct examination that when a house like Armour & Company hedged on the Chicago Board of Trade it did not deliver its wheat upon its future contracts that it made by way of hedge? A. Yes sir.

Q. Now how do you know that, and then I will ask—well, how do you know that?

A. I know it by the reason that if that were true, that they did, there could never any wheat go out of Chicago; it would never move; it would stay in the elevator forever. If Mr. Armour could get as much for his wheat to deliver it on a December contract to-day, he would never export a bushel of it, consequently the price of wheat on a normal market must be such that there is a profit to Mr. Armour to close the trade

and sell his wheat for cash for shipment or he never would do it.

Q. Is that all you know about it?

A. That is enough to know about it.

Q. Is that all you know about it?

A. I know that about it.

Q. Is that the reason you say Armour & Company and such firms do not deliver their wheat upon their hedging contracts?

A. That is absolutely the reason that they trade in millions and millions of bushels of wheat and corn on the Chicago Board of Trade and practically never deliver anything. That is the reason they do it because it is worth more money to ship it than it is to deliver on these contracts.

Mr. Robbins: I move to strike out the answer.

The Master: That may stand.

Mr. Robbins: Do you know whether exporters of wheat buy on the Chicago market or not?

A. Sometimes I presume they do.

Q. Well, now, what do you know about that?

A. Well, I don't know very much about it; I know less about that than I do about the other.

767 Q. Do you know whether in buying for export they buy the future contract or present contract, contract for present delivery? A. Most of it is for present delivery.

Q. How do you know that?

A. About the same way I know the balance of it by the customs and usages of the trade.

Q. Have you ever been on the floor to see those trades?

A. They are not made on the floor never touched the floor.

Q. How do you know that?

A. Because they are made off the floor.

Q. Give us your personal observation. When did you ever see an exporter buy a carload or vessel load of wheat?

A. I never saw him buy one.

Q. Either on or off the Board of Trade?

A. If you go and ask an elevator man over there about it, he will tell you he has cabled offers of so much wheat and tomorrow the exporter will answer "Accept so much wheat" for such and such delivery; the contract was not on the Board of Trade, never was on and never will be.

Mr. Robbins: I move to strike that out.

The Master: It may stay in as tending to show how these gentlemen—

Mr. Jenks: You asked him how he got it.

Mr. Robbins: He says he got his information from other people.

The Master: He has answered how he got it, so it stays in.

Mr. Robbins: How do you know whether persons who own corn in the country and hedge it, whether they ship the corn to the Chicago market or deliver it on their contract and ship it elsewhere?

A. Because, as I told you before, and it is a non-answerable proposition and answers every one of your questions, that if the movement of corn to Chicago was as good a cash market as other places the corn would never move out of Chicago; there would be a congestion of corn here. The shipper of corn does not ship his corn to Chicago, the big handler of
768 corn, he ships it to the sea board. He gets more money for it than the Chicago price, or else he would drop it here. It would never leave his elevator unless he could get more money for it.

Q. Mr. Christie, I am speaking of corn in the country.

A. That follows the same general rules.

Q. The owner of which hedges in Chicago.

A. He does the same thing with it, he puts in his hedge.

Q. How do you know?

A. If he wanted to sell his corn he would sell it for cash; he wouldn't hedge it at all. What the devil would he bother with hedging for?

Q. How do you know whether a man who has corn in crib in the country and sells it in Chicago by way of hedge, actually delivers upon those hedges or not, of your own personal knowledge? A. How do I know?

Q. Yes?

A. I know it the same way I know this other proposition, that it is a business proposition for people in the grain business to make money. They are not buying wheat and selling it for their health very clearly.

The Master: Do you know it in any other way than you have stated?

A. No sir; the general conduct of the trade prohibits it, would prohibit it. There is more money for them to do other things. The only time any considerable grain gets into this market or any other market, that is the Chicago market or the New York is an abnormal market; when somebody tries to corner some market and puts up the prices here higher than any place in the world; then they will dump the wheat or corn in here but on a normal, natural market, it never gets up there; it goes through here, but it never gets on the Board of Trade.

Mr. Robbins: How much grain is there here now?

A. I don't know. This is delivery day on the Board of Trade I was over there to-day and asked how much stuff was delivered—

Mr. Robbins; I ask that that be stricken out.

The Master: That is irresponsive.

769 Mr. Robbins: I move to strike it out.

The Master: It may be stricken out. (Question read.)

Mr. Robbins: You said you didn't know?

A. No, I don't know.

Mr. Jenks: The question is, how much grain is in Chicago, if you know that, answer it?

A. Over twenty million bushels, I think, wheat, corn, oats, rye and everything.

Mr. Shea: It is not on the Board of Trade?

A. Yes sir, over on the Board of Trade.

Mr. Robbins: How much time have you spent in Chicago in the last five years?

A. I don't know, Mr. Robbins, not a great deal.

Q. Well, about how much?

A. Oh, I haven't any idea. A man does not have to stay in Chicago to learn the grain business. He can possibly get a comparative knowledge of it away from Chicago.

Mr. Robbins: I move to strike that out.

The Master: That may be stricken out; it is irresponsive.

Mr. Robbins: You say you bought four hundred thousand bushels of wheat in Chicago? A. Yes sir.

Q. When was that?

A. I didn't say wheat, did I? I said corn.

Q. Well, make it corn? A. Yes.

Q. When?

A. Oh, I bought—I have bought in Chicago in the last six months a good many million bushels of wheat and corn.

Q. You were speaking of a particular trade, a straddle of four hundred thousand bushels?

A. That was—in—I think it was in June.

Q. You hedged on the Chicago Board of Trade?

A. I bought it in Chicago and sold it in Kansas City, yes sir.

Q. Through whom did you make that trade.

A. I think it was through the Simonds Grain Company.

Q. Through what?

A. The Simonds-Shields Grain Company.

Q. Through who on the Board of Trade did you make that transaction?

Mr. Jenks: I object.

770 A. I didn't say I made it through anybody on the Board of Trade.

Mr. Robbins: You said it was made on the Board of Trade?
A. Certainly it was. I have trades made there whenever I want to. I would like to testify to one other thing of my own.

The Master: I think your attorney will examine you in regard to it, Mr. Christie.
Mr. Harkless: He has a right to make an explanation.
The Master: Exactly but Mr. Jenks will give him an opportunity to make any explanation he desires. I have no doubt.

Redirect Examination

By Mr. Jenks:

Q. Now, will you state, Mr. Christie, what it was that you said you wanted to say?
A. I wanted to testify that I had four hundred thousand bushels of corn bought here for December delivery.
Q. Bought where? A. On the Chicago Board of Trade.
Q. This year?
A. Yes sir, this month, this last month. A few days before the first of the month I sold that corn out and bought May in its place at two cents a bushel more than I got for the December, in the pit—I suppose it was done in the pit, and the reason I did that was because I wanted to stay in until May but I did not want to carry the cash property, and I, like everybody else, was running away from it, which they all did. So I have got my May corn at two cents over the price that I sold my December, and all the expenses paid to May. I couldn't carry it for that much money myself. It would cost me over two cents a bushel to carry it.

Mr. Robbins: I move to strike that out as immaterial.
The Master: It may stand.

Mr. Robbins: Who did you make those trades through?
A. I made those trades through somebody in Kansas City, I don't know.

William E. McHenry, a witness called on behalf of the defendant, being first duly sworn and examined in chief
771 by Mr. Jenks, testified as follows:

Q. You may state your full name?
A. William E. McHenry.
Q. Where do you live? A. Chicago.
Q. How long have you lived in Chicago?
A. 38 years last May.
Q. What is your business?
A. Broker and commission merchant upon the Chicago Board of Trade.

Q. Have you any other business in Chicago at the present time? A. I have not, sir.

Q. Are you a member of the Chicago Board of Trade?

A. Yes sir.

Q. How long have you been?

A. I have been since 1867 or '68; I cannot remember the year exactly.

Q. Under what name are you doing business on the Chicago Board of Trade now? A. W. E. McHenry.

Q. Under what name have you always done business there?

A. The first firm was Lake & McHenry, in 1867 or 1868.

Q. And existing how long?

A. I think that lasted a year or a year and a half, something like that, I don't remember. As I say it is a long while back and I cannot recollect all those things, Mr. Jenks.

Q. What was the business of that firm principally, commission business, or dealing on their own account?

A. Commission business.

Q. What was the next firm name?

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A. It then, in 18—after Lake & Henry dissolved, it was then W. E. McHenry.

Q. For how long a time? A. Until 1877 or 1878.

Q. What was the business of McHenry principally, commission business?

A. Commission business entirely, commission and brokerage.

Q. What is the difference between the two?

A. A commission merchant is a man who makes transactions upon the Chicago Board of Trade and goes by his own name without disclosing the name of his principal.

Q. Or customer?

A. Or customer, principal or customer. A broker is one who makes transactions upon the Chicago Board of Trade and gives up the name of his principal or customer in accordance with its rules.

772 Q. What was the next firm name under which you did business?

A. The last one I have is Cooley & McHenry.

Q. No, W. E. McHenry?

A. I thought I had given you that.

Q. About '77 or '78?

A. I said up to '77 or '78 it was Cooley & McHenry for a short time; it ran,—this may be a little mixed up possibly in answering your question, Mr. Jenks.

Q. Let us go clear along and see what different names you did business under on the Chicago Board of Trade?

A. I have done business under the name of Lake & McHenry, W. E. McHenry, Cooley & McHenry, Preston & McHenry,—

Q. And at the present time?

A. W. E. McHenry. I beg your pardon. There was a time in 1882 when it was McHenry, Rush & Company. I forgot that fact.

Q. And during that whole time was the business conducted practically the same as that which you have mentioned, commission and brokerage? A. Yes sir.

Q. Which was the greater part of the business, commission business or brokerage business? A. Commission business.

Q. And at the present time, which is the greater part?

A. Commission business.

Q. What particular part of that business conducted by you or your firms has been actually attended to by you?

A. All of it.

Q. How extensive has been your commission business on the Board of Trade?

A. Without reference to my books, it would be impossible to answer that question. It has been very large.

Q. Can you make an estimate of it from day to day, week to week, month to month, or year to year?

A. No sir, I cannot.

Q. Can you state how large was the largest transactions you had on the Board of Trade? Come somewhere near it?

A. Before I answer that question—do you mean any given day or any given week, or any given time, or—

Q. No, what I want to get at is, an estimate of the extent of your business. You say very large. Now what do
773 you mean by very large, in bushels?

have

A. Well, in one day I bought—let me modify that; on one call, when we had a call board, I bought five million three hundred thousand bushels of wheat. I recall though I sold on one day one hundred and twelve thousand barrels of pork. That would be a sample, perhaps.

Q. Were those two transactions for future delivery, or were they cash transactions?

A. Those, as I recall them, were for future delivery.

Q. Was your business on the Board of Trade for customers in the commission business dealing in cash commodities or for future delivery? A. Both.

Q. Which the greater?

A. I should say future delivery.

Q. Where are transactions for future delivery in commodities entered into on the floor of the exchange room of the Board of Trade conducted?

A. There is one place for wheat, another one for corn, another one for oats, another one for rye, another one for flax, and another one for provisions of different kinds.

Q. Are those places generally called pits?

A. Yes sir, that is, the wheat, corn and provisions are called pits. The others are done right on the floor itself, without any elevation, or what you would call a pit.

Q. At these pits, are there any cash transactions conducted?

A. Yes sir.

Q. Compared with the transactions for future delivery, how do they rank?

A. It would be impossible to answer that question.

Q. Are there few or many in proportion to those for future delivery?

A. It would be an utter impossibility to answer the question, Mr. Jenks. I am not omniscient enough to keep track of the pits and different places of trading on the floor.

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Q. Do you call a transaction at the pits a cash transaction if it is made for delivery for the current month?

A. It may or may not be.

774 Q. I am speaking—what I call a cash transaction is one for immediate delivery and payment, not seller in the month. Now I ask you again if there are sales of cash commodities for immediate delivery and payment conducted at the wheat pit?

A. I have made a great many transactions, both purchases and sales, for cash delivery in the wheat pit, in the corn pit and in other pits.

Q. Have you made any there the past year?

A. I cannot recall any without reference to my books, Mr. Jenks.

Q. Have you made any deliveries of wheat sold at the pit within the past year?

A. Yes sir, I made some to-day. My recollection would be, without looking at the books, I think it was ten thousand bushels received and delivered to-day.

Q. Of what? A. December wheat.

Q. Who did you receive it from?

A. Well, I couldn't answer the question without reference to my books, Mr. Jenks.

Q. Who did you deliver that to?

A. I couldn't answer that question without reference to my books.

Q. In what manner did you receive it?

A. Upon the contract basis provided in the pit's rules and delivered it in the same way.

Q. Did you receive it yourself?

A. No sir, I have a man I employ for that purpose.
Q. Did you pay for it?
A. I did not pay for it, no sir.
Q. Did your house pay for it? A. No sir.
Q. Did your house actually get the warehouse receipt?
A. We got what is called a delivery notice, under the rules of the Board of Trade, and delivered the property out the same way under the rules of the Board of Trade.
Q. You did not have the warehouse receipt at all?
A. I did not, no sir.
Q. And you did not pay for it at all?
A. I did not, sir.
Q. Have you within the past year received and paid for anything on the Board of Trade?
A. I could not answer the question without reference to my books.

Q. And when you say that you think you received
775 and delivered ten thousand bushels of wheat to-day—
A. That is what my man informed me who attends to that part of the business.
Q. How much had you dealt in for December delivery?
A. I could not answer the question without reference to my books.
[A.] About how much?
A. I could not answer without reference to my books.
Q. Had you dealt in as much as a million bushels for December delivery? A. I should say not.
Q. Had you dealt in as much as five hundred thousand?
A. It would be perfectly useless for me to make an estimate without looking at my books.
Q. Have you any objection to looking at your books and testifying here as to the extent of your dealings there, say in the past year?
A. Well, if you will allow me to say one word right here—I did not go back into business until the first day of June, 1901. I was out of business previous to that time.
Q. For how long a time?
A. Two years and a half—yes I was longer than that. There was several years I was out of the business as a broker and commission merchant and did not go back into it, or do business upon the Board of Trade until the first day of June, 1901, or about that time.
Q. Can you testify to this, how your transactions on the Board of Trade, for customers, in the commission business, was usually closed up and ended, how a great majority of the transactions were closed up and ended?
A. You are talking now about my whole business?
Q. Yes? A. My whole business upon the Board of Trade?

Q. Yes, for future delivery?

A. I should say that, take my own business as a sample, of course varying a great deal under different circumstances, that
about five per cent of the amount of property that I have dealt in upon the Board of Trade has been settled by the actual receipt and delivery of property. That would be about
776 a fair estimate.

Q. And in that five per cent do you mean that the actual warehouse receipts were turned over and actual checks given in payment for the commodity?

A. Yes sir, that is what I call a cash delivery of property.

Q. You don't mean a delivery by the notices that are sent out on a Board of Trade?

A. No sir, I look upon that the same as a cash delivery of property, those notices.

Q. Very well. Now I want to know whether the deliveries the
that you speak of, five per cent, were made by those notices, or were they made by the actual handing over to you to or from you to the other party of warehouse receipts for which checks were at the time given and received?

A. Now if the stenographer will wait just a moment, perhaps it might be just as well for me to explain.

[A.] No. I don't want you to explain. I just want to get at how that five per cent of the commodities were delivered?

A. I was going to try and explain to you, Mr. Jenks, that previous to the adoption of the present system of delivery of property upon the Board, by what are called delivery notices, that cash property was delivered into the office of the different members of the Board, paid for by them, and then redelivered to other parties to whom they had it sold. That was previous to the adoption of the present system.

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Q. I understand. When the present system of notices adopted?

A. My recollection would be in 1882 or 1883, probably 1884; I cannot recollect the time that that system was adopted.

Q. Now we will confine the talk to the period of time since 1884?

A. Of course the records of the Board will show the time that system was adopted.

Q. But we will confine the talk to the period since they adopted the delivery notices. Now I will ask you the question

as to how that five per cent that was paid was delivered?
777 Was it by passing around the notices, or was it by delivery to you or by you to somebody else of the actual warehouse receipts for which checks were given?

A. Since the adoption of the present system on the Board of Trade, with very few exceptions, it has been by the delivery of notices. It would have to be an exceptional—

Q. And what portion of the cases where a delivery notice was given to you or by you, would the notice remain with you and you actually receive or deliver the warehouse receipt?

A. I could not answer that without reference to my books.

Q. Well, wouldn't it be a very small proportion of the five per cent? A. Not necessarily.

Q. But you would not undertake to state how—

A. I would not undertake to state that without reference; you are asking me questions that are pretty hard to answer without reference to my books.

Q. Now we will come to the ninety-five per cent of the transactions; how were they closed?

A. They were closed under the rules of the Board of Trade by a system adopted under those rules of what are called settlements.

Q. On rings? A. Settlements on rings, yes, sir.

Q. And closing out through the Board of Trade clearing house? A. Yes sir.

Q. Will you state in what manner you ascertained that a ring exists and describe to us the mode of ringing up deals there, and settling transactions where there is no actual delivery of the commodity?

Mr. Robbins: Wait a moment; I object. He asks the witness what the system is. He has already said that is provided for by the rules, and the rules are the best evidence. If he asks what actually took place, this witness has not said he ever had anything actually to do with closing by rings.

The Master: The objection is good. In other words, if you intend to show the rules of the Board of Trade, you should qualify this witness.

778 Mr. Robbins: Find out if he had anything to do with it.

Mr. Jenks: He has testified that he had all to do with it. I asked him what part of the business he himself conducted and he said all of it.

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The Master: Now ask him if he has conducted specially and knows the conducting personally of these rings.

A. I never personally conducted them. I know of them, of course.

Mr. Jenks: Now will you answer my former question. Read it to him. (Question read.)

Mr. Robbins: I object to that.

The Master: He may answer, whether they are conducted in accordance with the rules or different from the rules first.

Mr. Jenks: I did not ask that question. I ask the witness now, he having testified that there was ninety-five per cent of his business that was not closed up by actual delivery of the commodity, and he has said that that ninety-five per cent was closed up by ringing up the deals. I now ask the witness how the ringing up of the deals in reference to that ninety-five per cent of the commodities that they dealt in, were closed up and ended?

Mr. Robbins: He has already said he did not personally close them up.

The Master: He has said he knew how it was done, in answer to my question.

Mr. Robbins: I don't understand by that that he knows how the trades personally were closed out, but what the rules are.

The Master: He may answer. (Question read.)

The Master: Have you personally dealt in that ninety-five per cent?

A. Shall I answer the question?

Q. Yes.

A. The only way I can answer that is to illustrate.

Q. Very well.

Mr. Jenks: Go on.

779 A. I have five thousand of wheat sold to the Master for December at seventy cents; the Master has it sold to Mr. Hill at seventy-one; Mr. Hill has sold it to Mr. Robbins at seventy-two, Mr. Robbins has sold it back to me at seventy-three. Under the state of things as mentioned here, I would owe upon that $150.00. Having had it sold at seventy, and it having been traced around from myself to the Master, from the Master to Mr. Hill, from Mr. Hill to Mr. Robbins, and from Mr. Robbins back to me. The man that I employ for that purpose would ascertain the state of facts I have just stated. I owe $150.00. Every day a fixed or settling price is made upon the Board of Trade. All of the parties in interest in this ring that we are talking about now, or the settling men of all the parties in interest get together, and they ascertain that McHenry owes $150.00. That amount of money he pays into the clearing house and the different parties in interest as is shown by this ring made, collect that amount of money. That constitutes what we call a ring.

Q. Then what becomes of the contracts that existed between the parties to this ring?

A. They are, under the rules of the Board, closed.

Q. Cancelled?

Mr. Robbins: I move to strike that out, "Are under the rules of the Board of Trade, closed." I think Mr. Jenks better put in the rules and not run them in with this witness.

A. Perhaps I had better modify that to this extent—

Mr. Robbins: No, I want to strike that answer out.

Mr. Jenks: You need not pay much attention to Mr. Robbins at this time.

A. I am endeavoring Mr. Jenks, to try to state this business as it is, the best I know how.

Mr. Jenks: That is just what we want.

Mr. Robbins: I want the ruling of the Master on that motion to strike out.

Mr. Jenks: I object to its being stricken out. Has
780 the gentleman got down to this, that we must confine ourselves to the rules of his client, in order to make proof of what is actually done on the Board of Trade by members of that Board, if he thinks that, he is mistaken.

The Master: The objection is overruled.

Mr. Jenks: Cancelled, are they not?

A. Closed out and cancelled.

Q. And there is no delivery of the commodity by anybody to anybody else?

A. Not after a contract has been closed in, the method I have described.

Q. Now will that method that you have described as to one transaction serve as applicable to the whole ninety-five per cent of the trade you had that were closed up by ring?

A. Will you repeat the question?

(Question read.)

A. It would where they are closed in the manner I have described.

Q. No, are they sometimes closed without a delivery in any other way; for instance, is there a direct settlement between you and another member of the Board? A. Yes sir.

Q. Will you describe what a direct settlement is?

A. I sell the Master five thousand bushels wheat for December delivery at seventy-two cents. I buy it back of him at seventy cents. If he agrees to the settlement of that contract, it is what is called a direct settlement. If he does not agree to it and says that I must deliver him the property sold him, then there can be no direct settlement, but if there is a

direct settlement, that is, if there is no objection on his part or on mine, that is there is no objection on his part or on mine, that is what is called direct settlement.

Q. And you do what?

A. It goes through the same method.

Q. They cancel both contracts and pay to each other the difference?

A. Yes sir, through the clearing house of the Board of Trade, under its rules.

Q. And that is the difference in the market price. Now did you ever hear of a case where a man did refuse to
781 cancel the contracts under the circumstances you have just stated? A. Many of them.

Q. Then if it stands in just that situation up to the day of delivery, since these delivery notices have been in effect, will you tell how the delivery is finally made, where you have got it sold to the Master and bought back from him, the same commodity for the same delivery?

A. I don't know that I have ever known of a case that ran to the end of the time a contract was made where that state of things existed, and I hardly know how to answer the question.

Q. I think, Mr. McHenry, that you merely have been mistaken in the first statement you made where you talked or I was asking you about a direct settlement? A. Yes sir.

Q. Now you stated how that might be done? A. Yes sir.

Q. Now if that state of facts exist how is that settlement made between you two, and the contract cancelled?

A. You are assuming now that it ran clear to the end of the time of the contract? [A.]

Q. No I am not; I am assuming that you had a sale to the Master and a purchase back from him, and that those contracts were cancelled. I want to know how it was done?

A. Well, if he agreed and I agreed to this direct settlement there would be no controversy between he and I.

Q. And you would settle on the difference?

A. On the difference.

Q. In the market price? A. Yes sir.

Q But suppose he would not agree to it, and the day for delivery arrived?

A When the day for delivery came, the 31st day of December, December being the month for which this contract was made, and I had five thousand wheat sold to him at seventy-two cents and for certain reasons of his own he should insist I should deliver to him the actual property at seventy-two cents—

Q. And you would do that by notice?

A. By notices under the present rules of the Board
782 of Trade, yes sir; he could then in turn deliver that back to me at seventy-two cents.

Q. Did you ever know a case like that?

A. I have known of such cases, but they are rare of course.

Q. Would he give you a check for the amount?

A. He would necessarily be obliged to give me a check for the amount.

Q. And then when you handed the notice back to him and when he handed the notice back to you, you would give him your check for the amount? A. Yes.

Q. After the grain was first sold by you to the Master, you would deliver the notice to him? A. Yes sir.

Q. And he would give you his check for it? A. Yes sir.

Q. Then if he had the same thing sold to you he would deliver the notice to you and you would give him your check for it? A. Exactly.

Q. Then you would have the notice?

A. I would have the notice.

Q. Where was the commodity when the notice started?

A. If the property went no farther than myself—

Q. If that was where it started you would give the notice?

A. The notice need not necessarily start from me. It might start from John Brown or John Smith.

Q. It would not have to start from you?

A. Assuming it started from me—

Q. Yes?

A. And I started out the notice of this property back to him—

Q. Yes?

A. And he had refused at the time to make this direct settlement,—

Q. Yes?

A. I would deliver him this notice, and say he must give me a check for this property, which he would be obliged to do under the rules of the Board of Trade. He then in turn could deliver the notice back to me and I would deliver him the property under those circumstances, the actual warehouse receipts; under those circumstances I would deliver him the actual warehouse receipts for which he must give me a
783 check; that is when he delivered the property to me he would give me the warehouse receipts back and I at
would pay him back seventy cents as I had bought of him.

Q. Have you ever known of such cases on the Chicago Board of Trade? A. I have known of such cases.

Q. Who ever did that?

A. I cannot recall now. I know I have had a number of instances where people have absolutely refused to make what

we call a ring or settlement, where it was direct, and they have compelled me to deliver them the actual property and take their check, and delivered me the actual property back and took my check, and when that case happened you bet your bottom dollar both of them were certified.

Q. Now in that case, the delivery occurred by your property to somebody else, you had the property, and the property being delivered right back to you? A. Yes sir.

Q. The same instant? A. Yes sir.

Q. That was delivery and payment for the property?

A That was actual delivery and payment of the property.

Q. Now what proportions of the transactions that you have had on the Chicago Board of Trade were closed up in that way?

A. Oh, very small indeed, very rare. As I remarked before, it is not often that a thing of that kind happens, but it does happen.

Q. Is there a case in a million where that happens?

A. I cannot make any estimate of the amount.

Q. Now what is the object, what is your object, where you have transactions that you close up by a ring, what is your object in ringing up those deals?

A. To get them off from my books and save all the annoyance and bother of putting up margins on both sides of the trade, with the trade on the Board, to get my books in as close shape as possible, pay any money that I might owe upon these contracts, or receive any money that I might have coming.

Q. What is the object of putting up margins? Why don't you pay for the stuff?

A. Well, that is a pretty hard question to answer.

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784 Q. What sort of business is that, putting up margins?

A. Well, the rules of the Board of Trade provide; they will answer the question.

Q. I am not asking you about the rules of the Board, I am just asking for the practice?

A. Well, whether it be the practice there?

Q. Yes?

A. Of course, as a member of the Board of Trade, I am obliged to comply with its rules, to try to, at least.

Q. What is that?

A. As a member of the Board of Trade, I am obliged to comply with its rules, to try to at least.

Q. You don't always do it, do you?

A. I don't know that I have ever violated them, Mr. Jenks; I don't think I would be there if I had.

Q. They used to have a rule there against buying puts and calls, didn't they?

A. A rule on the Board? No sir. There never was a rule of that kind in the statute books of the Board.

Q. No rule there about puts and calls?

A. They did say they would not recognize a contract growing out of a put and call. The rules of the Board provide for that.

Q. When did the members of the Board of Trade stop dealing in puts and calls?

Mr. Robbins: I object to that unless it is confined to what took place on the Exchange. We are not trying what the members of the Board of Trade do in alleys or in their own offices. It is the method of the Board of Trade that we are interested in.

Mr. Jenks: Wait a minute and I will put it right, in the exchange room and in the pit if you will hold on a minute.

Mr. Robbins: The question should be confined.

The Master: I guess it is confined enough.

Mr. Jenks: Don't let's have the delivery before the confinement. Read the question. (Question read.)

Mr. Jenks: I will help you out a little?

A I wish you would please.

785 Q. When did they stop dealing in puts and calls here in Chicago?

A. Well, I will have to ask you, like a Yankee, I will have to ask you a question: Do you mean upon the floor of the exchange?

Q. No, I mean after the Exchange had shut up, right in another room in the Board of Trade building, do you know it to be the fact that a great many of the members used to meet there after business hours and deal in puts and calls?

Mr. Robbins: I object to that.

The Master: Overruled.

Mr. Jenks: Right in the Board of Trade building, not in the Exchange hall, though?

Mr. Robbins: I object.

The Master: Overruled. You may answer.

A. I beg pardon?

The Master: You may answer.

Mr. Robbins: I don't think the Master appreciates what we are here to try. The question is whether they are conducting in whole or in part transactions that are against the law. Now we have got out of the Exchange building into some other place.

Mr. Jenks: I will get you back in there in a few minutes.

The Master: The answer sets up most of these facts as being

within the knowledge of members as members, and the Board as a whole. (Question read.)

Mr. Jenks: Don't you know that?

A. I confess, Mr. Jenks, I can recall no room in the Board of Trade building.

Q. Well, anywhere else, then?

Mr. Robbins: Now I object again.

Mr. Jenks: Anywhere else where the members after business hours on the floor of the Exchange, that you know that the members used to meet and deal in puts and calls?

Mr. Robbins: Same objection.

The Master: Overruled.

Mr. Jenks: As an insurance to carry their trades over
786 to the next day?

The Master: You may answer.

A. Yes sir, I know of a place of that kind.

Mr. Jenks: Well, now, in that place, was that in the Board of Trade Building, or where was it?

A. The room that I think you refer to was diagonally across the street from the Board of Trade on Sherman Street. I cannot recall the number.

Q. Wasn't there also a room in the Board of Trade building where they did the same thing?

A. I cannot recall any room in the Board of Trade building where that thing was allowed—not since—

Q. Now, when did they stop doing that, buying puts and calls down there about the Board of Trade building?

A. I cannot answer that question. It is a good number of years, Mr. Jenks.

Q. Do you know when John Hill got after them this man sitting here? A. No, I cannot recall that.

Q. And scared them almost to death for a week and they stopped their puts and calls and then the members of the Board went right back to doing it again? A. I cannot.

Q. And do you know now of puts and calls being dealt in by members of the Board of Trade in Milwaukee, and carried out here on the Board of Trade afterwards?

Mr. Robbins: I object.

The Master: Objection sustained. I do not think that is a competent question.

Mr. Jenks: While you did know of their dealing in puts and calls, didn't they afterwards, the next day, if they called, go

up on the floor of the exchange and enter that transaction down on the trading card as a transaction made on the floor?

Mr. Robbins: I object to that.

The Master: Objection overruled. Answer.

A. You refer now to the time when they had this room across from the Board of Trade on Sherman Street?

787 A. I don't care what the time was. I refer to the time when members of the Board used to trade in puts and calls out of trading hours, and then afterwards go on the floor of the exchange room the next day, didn't they, if they called, put that trade down in the trading card as one made on the floor of the exchange?

A. They couldn't have put that trade down as made upon the floor of the Exchange. They did put them down as either put or called in this room I have mentioned, outside of the exchange room, and outside of the Board of Trade and its precincts entirely.

Q. What did you mean a few minutes ago when you said the Board of Trade passed a rule that would prevent them from entering put and call transactions down as initiating the trade?

A. I think, Mr. Jenks, you are wrong as to my answer on that.

Q. What do you say about that?

A. I did say that the Board of Trade passed a rule that they would recognize no contract growing out of a put or a call, as to the enforcement of discipline under the rules of the Board of Trade. Possibly I did not make it as explicit as I have now, and today no man can go in there and enforce a contract growing out of a put or call, or what is known as a privilege, under the rules of the Board of Trade. In other words, if I make a trade of that kind, under the rules they would try to discipline me for making anything on it, or making a charge just on it; if I did it to please somebody they would refuse to discipline me in any shape or form.

Q. Then the Board of Trade has no objections to dealing in puts and calls and it will not discipline a man for making such transactions off the floor?

A. They will not discipline you for making such transactions off the floor but they will not help him or anybody else to enforce a contract growing out of this kind of transactions.

Q. Mr. McHenry, you are at the present time a member of the Board of Trade and doing business there every day, are you? A. Yes sir.

788 Q. In testifying in this case are you restrained in any way from stating the actual facts as you understand them, in consequence of rules of the Board or what may be done under them? A. No sir.

Q. Do you feel at perfect liberty to state the facts as they are, without any restraint? A. I do, sir, most decidedly.

Q. Now, with that understanding, will you tell me what settlement clerks employed by members of the Board of Trade are, and what they are employed for?

A. Perhaps I had better answer in this way, by illustrating; perhaps that is the better way of doing it, but I can do it in a general way, Mr. Jenks, just as yourself and the counsel and the Master decides.

Q. In order to answer that question, you need not illustrate. I want to know what the duties of a settlement clerk are, and why members of the Board of Trade employ such clerks?

The Master: Divide that in two parts. First, what are their duties. Answer that first.

A. Well, I will take my own settling clerk as a sample.

Mr. Jenks: Yes?

A. Every day, at the close of the session, I give him my card with the transactions I have made during the day on the bought or sold side of that card. He takes that and goes around among the other settling clerks employed by other members of the Board and endeavors to settle my contracts, get them off my book.

Q. How can he do that?

A. There is a collection of these people that are employed by the members of the Board, and they get together and find out where people have property bought for a delivery or property sold for a delivery, and endeavor to make these settlements between each other.

Q. And all of those settling clerks that meet there are employed by their employers for the same purpose, are they not?

A. Yes sir.

Q. Now they go over and ascertain who has got this commodity bought and sold? What is the object of your clerk in being there? Suppose you have made a sale on your card of a commodity, what do you want that clerk to find out, and
789 what does he go there to find out?

A. He goes there to find out to whom the party—wait a moment, just a second. I will get this straight in my head in just a moment. He goes there to find out to whom people have property sold and I have it sold to, to see, to ascertain if I have it bought of somebody else that those people have it sold to and thus make a ring if he possibly can, or a settlement.

Q. And the object is to find there is a ring, isn't it?

A. Yes sir, that is, if a ring can be made or a settlement can be made.

Q. And if he finds a ring can be made or a settlement can be made he reports that to you? A. Yes sir.

Q. Then what is the next business after you ascertain that?

A. The next business is for him to enter that upon what is called my ring book, to whom sold and of whom bought, and the amount that I have to receive or pay upon that individual settlement.

Q. And what you have to receive or pay is the difference in what?

A. The difference between the price I have it sold at and have it bought at.

Q. Then after you ascertain that what is the next thing connected with it?

A. He then takes that individual transaction with perhaps others and enters it upon what is called the clearing house sheet.

Q. What sort of a thing is the clearing house sheet compared with defendant's exhibit 1, which I now hand you?

A. This is a Board of Trade clearing house sheet.

Q. Defendant's exhibit 1 is a clearing house sheet, such as you speak of, is that it? A. Yes sir.

Q. Who furnishes those clearing house sheets to the members of the clearing house?

A. The Board of Trade clearing house itself.

Q. Now, who gets those clearing house sheets from the clearing house, the blanks?

A. Ordinarily the clerks employed by the different firms upon the Board of Trade.

Q. That is to say, the clearing house sheet is taken by the clerks to their respective houses, is that it?

A. Yes sir.

790 Q. Then who, of the members of the Board of Trade in the morning fill out these clearing house sheets?

A. Ordinarily, take my own business, my settling clerk does it.

Q. I am asking now of the different houses; what different houses have clearing house sheets made out in the morning?

A. All of the people who may be members of the clearing house at the time.

Q. They all make out clearing house sheets? A. Yes sir.

Q. And the clearing house sheet, so far as each member of the Board of Trade is concerned, who makes out one, contains merely a statement of the money coming to him from the clearing house and the money going from him to the different members of the Board whom he designates, is

A. You hardly have that correct.

Q. I want you to make it correct.

A. This sheet speaks for itself. We will say that this was my clearing house sheet for this morning?

Q. Yes?

A. My name is upon this as a member of the clearing house.

Q. Yes? A. I owe to somebody so much money?

Q. Yes? A. I claim from him so much money.

Q. Yes?

A. The balance I either collect of the clearing house or pay to the clearing house, as the case may be in the rules prescribed by the rules of the Board of Trade, or by the rules of the Board of Trade—

Q. Wait a minute. You make out one sheet you say for your own transactions, you claim from Smith, Jones and Brown, each of them so much money? A Yes sir.

Q. Down at the bottom you foot that up don't you?

A. Over here, yes sir.

Q. You foot it up? A. Yes sir.

Q. You have got so much coming to you?

A. Yes sir.

791 Q. You also put in this sheet, "I owe to Robbins, Warren" and some other big men of the Board, each of them so much money? You add that up, don't you?

A. Yes sir.

Q. Now we will say that the two items, the amount that you owe exceeds the amount that is coming to you in the sum of ten thousand dollars. What accompanies your sheet from your office to the clearing house?

A. A check made to Samuel Powell, Manager, a certified check, I should say, made to Samuel Powell, Manager, for that amount of money.

Q. Ten thousand dollars being the difference in the two columns? A. Yes sir, of what I have coming and what I owe.

Q. Then what does Samuel Powell do with that check?

A. Well, now you are asking me something I can't answer.

Q. You don't know?

A. I don't know what he does with it.

Q. I will take something easier then. What does Samuel Powell do for these men to whom you owe money?

A. He makes them a check for the same amount.

Q. Each one of them? A. Each one of them yes sir.

Q. For the amount that is owing from you to them and also if there happens to be a hundred other members of the Board of Trade there what amounts are due those same people included in the total, don't he?

A. Just the same as the clearing house of the banks. This is an exact copy of the bank clearing house business, just exactly.

Q. Now we will say that the difference in the two items was in your favor? A. Yes sir.

Q. Amounting to ten thousand dollars? A. Yes sir.

Q. You would have no check accompanying your clearing house sheet, but Samuel Powell, the manager of the clearing house, would make out a check, his own check, payable to you for that amount?

A. Yes sir, a certified check, payable to me, signed by him as manager.

Q. Now those amounts that are put in the clearing house sheet as due to you from somebody else or somebody else
792 to you, are made up of differences in what?

A. Differences in the different transactions included in the settlement.

Q. What? They would be differences in the market prices of the commodities that you had been dealing in? A. Yes sir.

Q. That is the difference between the market at which you sold and the market price at which you bought?

A. Well, I will modify that answer by saying that every day there is what is called a settling price to settle under, under the rules of the Board everybody pays up to or down to that.

Q. I know, but Mr. McHenry, has the settling price anything to do with the difference between the price at which you buy a commodity and the price at which you sell it?

A. Not the slightest in the world.

Q. So that what you owe to somebody is the actual difference between the selling price and the purchase price?

A. Undoubtedly.

Q. And that is all you do owe?

A. That is all I do owe.

Q. The difference between the [the] two prices?

A. Yes sir.

Q. Now the only thing that the settling price in these two transactions, the settling price fixed by the Board of Trade, has to do with these transactions, is merely enabling the members of the Board, the members of the clearing house, to figure up or down any loss or profit in one single transaction of bought and sold?

A. I will answer that by saying that this settling price is purely a clerical thing for convenience of members of the Board more than anything else.

Mr. Robbins: A figuring price? Who fixes it?

A. Let me get that last answer straight.

Mr. Jenks: Don't pay any attention to Mr. Robbins. He don't know anything in this case. The last question was who fixes the settling price? Is it fixed by the board of directors?

A. It is fixed by the Board of Directors, the committee of the Board of Directors I believe. I wouldn't swear to that unless I would look at the rules. I would have to look
793 at the rules to be sure of it. I know it is fixed every day, but I will be hanged if I know who does it.

Q. After it is fixed, where is it posted so that everybody can see it?

A. It is posted in the corridors of the Board back at the south entrance, and I think upon the Board itself.

Q. And in the secretary's office?

A. I think in the secretary's office. I think there are several places where it is posted.

Q. Now if you know, will you state why the Board of Trade every day fixes a settling price?

A. I answered that question a moment ago by saying I thought it was purely a clerical function to enable people to have some price to settle back and forth from more than anything else.

Q. Well, suppose that is so, how does it work?

A. Well, it does not—

Q. What good does the settling price do you?

A. I am perfectly frank to say I have never been able to see where it did very much good anyway. I am very frank to say that.

Q. Now let me find out if I can what the settling price has to do with your settling deals that have been rung up; for instance you have bought ten thousand bushels of May wheat at seventy cents? A. I have bought it of you at seventy?

Q. Yes, and you sell ten thousand bushels of May wheat to Robbins at seventy-one cents; Robbins has sold ten thousand bushels of May wheat to me at seventy-two cents. Now you have got a ring and you want to close it. The settling price as fixed by the Board of Trade is seventy-one cents. I want to know how you make out your clearing house sheet to get a settlement of this little ring between you Robbins and me, where there is two cents difference in the price. Perhaps if you figure that on the settling price, you would see what that price does?

A. I have two hundred dollars coming then, haven't I? I bought it at seventy?

Q. And sold at seventy-one?

A. Sold at seventy-one and I have a hundred dollars coming.

794 Q. Yes; Robbins has sold it to me at seventy-two and he has got a hundred dollars coming to him. Now I sold it at seventy and I have got it bought at seventy two. what I don't make much. I am out two cents on that. Now I want to know is, how you would make out your clearing house sheet

and how I would have to make out mine the settling price being seventy-one cents?

A. Well, let me see. I will have to make a practical illustration of this if I have got to go to bookkeeping. I am perfectly willing to say, Mr. Jenks, I never made out one of those clearing house sheets in my life.

Q. Now let me see if I can help you out in that transaction. I owe somebody two hundred dollars, don't you?

A. Yes sir, you owe me a hundred and owe Mr. Robbins a hundred.

Q. Now when I make out my clearing house sheet, I make it out that way, don't I? A. Yes sir.

Q. A hundred dollars going to you and a hundred dollars going to Robbins? A. Yes sir.

Q. How do you make out your?

A. A hundred dollars coming from—

Q. Robbins, and he makes out his hundred dollars coming from me? A. I guess that is right.

Q. A hundred dollars going to you, wouldn't he do that?

A. No, I don't think he does.

Q. No, he makes out the hundred dollars coming from me. Then I would have to pay to the clearing house one hundred dollars for Robbins and a hundred dollars and a hundred dollars for you, wouldn't I? A. Yes sir, that is right.

Q. Now, I do that because the settling price is fixed by the Board of Trade at seventy-one cents? A. That is right.

Q. I have figured down on one side and up on the other?

A. Yes sir.

Q. Now every member of the Board of Trade does that same thing, and the transactions that are rung up and settled through the clearing house result in the mere payment of the differences in market price, isn't that correct?

795 Mr. Robbins: Wait a minute: I object to that question.

The Master: He may answer if it is correct or not.

Mr. Robbins: It is not shown this witness knows anything about what other members do. We can ask him as to his own business.

The Master: He may answer. (Question read).

Mr. Jenks: Well, if you cannot answer that I will put another question.

A. It isn't that, Mr. Jenks, wait a moment. I want you gentlemen all to understand it is not any lack or desire on my part to give a full and free explanation regarding this Board of Trade business as far as I am able to do it, but I wish to add something, and you needn't put this down if you gentlemen don't want it. I wish to add something; when I speak about

this clearing house sheet, that deliveries of cash property go through this clearing house sheet a great many times just the same way as the other transactions that are not in cash.

Q. Don't go too far?

A. I asked you not to take this down.

Q. I think we will get on better if you will stick to the lawyers. When deliveries are made is the warehouse receipt passed to the man who finally gets the stuff?

A. Yes sir, it must be.

Q. Does the man give his check for that stuff until he actually gets in his hand the warehouse receipt?

A. Certainly not.

Q. Is the warehouse receipt delivered to him at his office?

A. Yes sir.

Q. The warehouse receipt never goes into the clearing house? A. No sir.

Q. When he gets the warehouse receipt in his office, which is the actual delivery, does he give his check to the man who leaves that warehouse receipt there?

A. No sir, he does not, he gives it to the person who starts the property first.

Q. I don't care, he gives the check—let's see now whether that is right. Who does he deliver the check that he gives to?

A. He delivers it—

796 Q. I don't care who it is payable to.

A. He delivers that check to the party who starts the cash property from his office.

Q. Then he does not hand the check to the man who hands him the warehouse receipt?

A. The party who starts the property naturally goes to this last man to get the money and he must give it to him.

Q. Wait a minute now.

A. It may go through fifty hands in the meantime.

Q. Did you ever receive a warehouse receipt?

A. Did I?

Q. Yes? A. Millions and millions of bushels of it.

Q. Did you receive one warehouse receipt?

A. Did I receive one?

Q. Yes? A. I think I have received a million of them.

Q. Did you receive one warehouse receipt? I am only asking for one?

A. Yes sir, I have received one warehouse receipt.

Q. Did you receive that from anybody?

A. I certainly did.

Q. Did you give that somebody who handed you that receipt a check? A. I did.

Q. Did you deliver the check to anybody else than the man who handed you that receipt?

A. No sir, never in my life.

Q. Now in every case, isn't it a fact that the actual delivery of the warehouse receipt to you is made at your office?

A. Yes sir.

Q. And that you deliver your check for that warehouse receipt to the man who gives you the warehouse receipt?

A. Undoubtedly and always.

Q. Then does that warehouse receipt ever go into the clearing house?

A. I never heard of one going in the clearing house?

Q. Then does that check ever go into the clearing house?

A. No sir.

Q. Then is it true that checks go into the clearing house for cash property?

A. I won't say that they have not but I never have known of any.

797 Q. I thought so. Now we will go back to what does go through the clearing house. In making out this clearing house receipt, you merely put down there the difference in market price that you owe or that somebody owes to you? A. Yes sir.

Q. And make your check for that amount? A. Yes sir.

Q. And give it to the clearing house. The other members of the Board do the same thing, and put down in the clearing house sheet the same thing that you do, only they have money going to different people and coming from different people, they were all made out in the same way? A. Yes sir.

Q. If the other members of the Board have money going, that is a difference in the market value the same as yours; if they have money going it is a difference in market value the same as would be coming to you? A. Yes sir.

Q. And those checks then that they give to the clearing houses are checks then merely for the difference in the market value, isn't that right?

A. They are differences upon the settlement of these contracts as I have already described.

Q. They are settled upon the difference in market price?

A. Yes sir.

Q. Then the Board of Trade clearing house receives those checks, which are a mere difference in market price and afterward gives a clearing house check to the different members of the Board of Trade for what they have received, splitting it up?

A. Yes sir.

Q. Passing them out to different members of the Board? That is a fact, isn't it? A. Yes sir.

Q. Then that clearing house is a place where the members of the Board settle their differences in market price and nothing else, isn't it? A. No sir, I don't think it is that.

Q. You don't? A. No sir, I don't.

Q. Well, is there anything else the clearing house does except to settle this difference in the market price?

A. I think the clearing house is purely a clerical in-
798 stitution, connected with the Board of Trade for the convenience of its members, the same as the clearing house is for the different banks. That is what I looked on the clearing house as; what it may be in law, or some other way, I don't pretend to know. I am simply stating my view of the clearing house.

Q. You don't know anything about the bank clearing house? A. I have some idea of that, yes.

Q. I will ask you [to] same question as to that. Does the clearing house paying the difference banks anything but the difference in the checks? A. Nothing in the world.

Q. That is, nothing but the difference in the checks.

A. Nothing in the world but that.

Q. Isn't that the case here, the clearing house pays the members of the Board the difference in checks?

A. Nothing else.

Q. And those checks from the clearing house are settlements from members showing mere differences in market value on which they have rung up deals?

A. I am not going to put it quite that way. I am not going to answer the question quite that way. The clearing house shows the settlement of the different contracts between the members of the Board of Trade, and is purely a clerical convenience for the members of the Board of trade for the settlement of its business and not necessarily on differences between the market price.

Q. Wait a minute, Mr. McHenry, member of the Board. Does that sheet that you send to the clearing house show the different trades you have?

A. Not all of them, no sir, only shows in it its transactions as they are closed.

Q. It merely shows the results of all the trades which you have had with some one other member?

A. No sir, it simply shows in it its transactions as they may have been closed by settlements or rings with the other members of the Board. It don't necessarily close all my transactions. I might. I might deal in fifty millions of wheat and and only settle seventy-five.

799 Q. I didn't ask you that.

A. Pardon me for correcting you.

Q. The clearing house sheet merely shows the money that is due you from somebody? A. Yes sir.

Q. Or the money that is going to somebody from you?

A. Correct.

Q. And if the money is due to you for a dozen different transactions, with some other one member, those dozen transactions are footed up in one item, and the one item is all that appears on the clearing house sheet and that is cash.

A. No—well, you are right about that; it finally would result, that John Brown, he might owe me a dozen different items; it would foot up that he owed me a lump sum and that those dozen different items comprised the amount.

Q. But the dozen different items would not appear on the clearing house sheet? A. No sir.

Q. Now, I started with you a few minutes ago to find out what these settling clerks were for. You got down to the point that every night, is it, after the board closes, they go around and see whether they can ring up deals—isn't that at night or in the morning they do that?

A. The next forenoon, usually, Mr. Jenks.

Q. The next forenoon? A. Yes sir.

Q. Before the Board opens or afterwards?

A. At a—it starts along about half past nine and lasts until twelve; the clearing house men get together—the settling men get together.

Q. The settling men representing all the different houses that are dealing get together for the purpose of seeing if they can ring up those deals and cancel them off? A. Yes sir.

Q. And if they can they are cancelled off in the manner you have described?

Q. Now, we will suppose that all those members of the Board are commission men and they are all dealing for outside customers which they have, do they pay any attention to those outside customers or their contracts in ringing up those
800 deals on the Board as between themselves?

A. Not unless they have special directions from the customers not to ring up or settle their contracts. Otherwise than that the customer is not paid any attention to whatever in the settlement of these trades.

Q. Is it the rule and general custom to ring up these deals whenever they can and cancel the contracts without reference to their customers at all? A. Yes sir.

Q. Now we will suppose that the Board of Trade man is not able to ring up his deal and cannot make a ring on the Board but he has had an order from the customer, an outside customer, to buy ten thousand bushels of May wheat at a certain price and he has bought it, and the next day he gets an

order from the same customer to sell and close his deal. What does the Board of Trade man do, sell it? A. Certainly.

Q. And he reports to his customer that he has sold?

A. Yes sir.

Q. And he also sends by mail the same night to that customer an account of purchase and sale of ten thousand bushels May wheat; he has got the price on both sides; he has figured out the difference between the two and he makes that difference either a loss or a profit, and he carries that out, don't he, loss so much, profit so much? A. Yes sir.

Q. Suppose it has been a profit; the Board of Trade man takes out of that profit, what in all?

A. His commission and the government tax.

Q. Then if his customer wants to close the whole thing up the Board of Trade man sends to the customer what?

A. Sends him a check or draft or the currency for the profit if there is any.

Q. And if there ain't any, if there is a loss, what does he do?

A. Why, if he hasn't got the money in advance of the customer to protect this contract he has made, he may draw on him, or may ask him to remit the amount that is coming to him.

Q. As a rule, has the Board of Trade man a margin
801 put up in advance?

A. He may have. I am sorry to say I have not always had.

Q. When you didn't have and you lost anything by it, you got sold, didn't you?

Mr. Robbins: I object.

Mr. Jenks: Because the customer was not as good as you thought he was, is that it?

Mr. Robbins: I object to that. I think you had better confine this evidence to something that has some distant connection with the case.

Mr. Jenks: Do you object to that question?

Mr. Robbins: Yes.

The Master: Objection sustained.

Mr. Jenks: Under what circumstances does a commission man require margins from his customers?

Mr. Robbins: That is objected to; that is not the action of the Board of Trade. That is the action of the commission man with his customer outside of the Board of Trade and that could not affect the complainant.

The Master: I think you had better confine it to the Board of Trade brokers.

Mr. Jenks: That is what I mean. Of course. I mean to confine it to the Board of Trade brokers or commission men.

Mr. Robbins: What takes place on the Board of Trade or what takes place so far as the Board of Trade knows and has to do with is material, but that is what takes place between the broker and his customer is outside.

Mr. Jenks: Don't be alarmed, my dear Mr. Robbins, don't be alarmed, you know and I know and everybody else knows the Board of Trade keeps a place up there for its members to come over to and pretend to deal for the customers they have.

(Question read.)

A. Unless he knows the customer to be one of undoubted integrity and financial ability, he always requires a protection on the contract he makes for him.

802 Q. And that protection you call a margin?

A. Yes sir.

Q. As a rule among the members of the Board of Trade, how is that margin called for in advance limited?

Mr. Robbins: Same objection.

The Master: Overruled.

A. That is entirely a matter between the commission merchant and his customer. There is no fixed rule on that subject whatever.

Mr. Jenks: Is there any fixed rule as between members of the Board, as to margins fixed to be put up? A. Yes sir.

Q. What is it?

Mr. Robins: Isn't that fixed by rule?

A. That is fixed by rule.

Mr. Robbins: Then I object.

Mr. Jenks: How much is put up?

The Master: You, are speaking now of the practice, irrespective of rule?

Mr. Jenks: As a practice there, how much is put up as a margin?

A. Answer the question?

Q. Yes?

A. That is a matter that rests entirely between the members of the Board themselves; there is no fixed rule on that subject that can be called for or enforced between members of the Board of Trade, but the margin is a matter entirely between the members, a matter of courtesy, or a matter of belief in their—

Q. The member of the Board of Trade has got a customer outside who has put up a margin and he has closed out his

deal; first he made a purchase of ten thousand bushels May wheat one day at a certain price; the next day he was ordered to close that out and he closed it out, and the whole transaction then, as between the member of the Board and his customer is settled and ended is it, when the difference is paid, the difference in market price, deducting the payment of revenue tax?

A. I would like to have that question—

(Question read)

803 A. Well, so far as the commission merchant and his customer is concerned it depends altogether on whether the customer owes him any money or not whether it is closed.

Q. No, when the amount is paid, the difference between the purchase price and selling price, deducting the commission and revenue tax?

A. You asked me the question whether is was closed between the members and the customer.

Q. Yes sir.

A. As I said, it depends on whether the customer owed any money.

Q. When he pays that money?

A. If he pays that money, if he owes the member, then it is closed.

Q. And the whole business is closed?

A. So far as the customer is concerned.

Q. And the end of May, the time for the delivery of that commodity has not arrived?

A. No sir, he sells May wheat and the month of May has not yet arrived, I assume that is what he is talking about?

Q. According to the practice on the Board of Trade among commission men, where they get orders from their customers to buy today, have they the right to order that trade closed out whenever they please?

Mr. Robbins: That is calling for the witness' opinion on legal question. (Question read).

Mr. Jenks: According to the practice there?

A. Who do you mean by they?

[A.] The customer.

Mr. Robbins: Let's have a ruling on the question.

The Master: That objection is sustained to that question.

Mr. Jenks: Why?

The Master: You asked him if they have a right?

Mr. Jenks: Suppose a commission man has a customer who orders a purchase of ten thousand bushels of wheat today for May deliver, and he tomorrow orders that purchase closed out what does the commission man do?

804 A. He goes upon the Board of Trade and buys it first and then he sells it, reporting the same to the customer, making him out an account of purchase and sale, and charging him the commission [—] government tax, and charging him up or crediting him with profit or loss as the case may be, in the transaction.

Q. Then if a customer today buys ten thousand bushels of May wheat at a price, how can he get out of that transaction if he wants to, tomorrow?

A. By simply ordering his commission merchant to sell it.

Q. And the commission merchant always does sell it under such circumstances?

A. Under such circumstances, yes sir.

Q. Then when he has done that, and the difference in the market price either deducting or adding the commission and the revenue tax, is paid, that ends the whole transaction between the member of the Board and his customer, does it?

A. I answered that question a while ago by saying it depended altogether on whether the customer owed any money or had any money coming to him; if he owed any money and had not paid it, it does not close it by any means.

Q. If he has paid it. If he has paid it, that ends the transaction.

The Master: Have you any more questions?

Mr. Jenks: Yes sir.

The Master: I think we had better go until tomorrow morning.

Thereupon, at 4:40 P. M., December 2nd, 1901, an adjournment was taken until December 3rd, 1901, at 10:15 A. M.

805 Ten o'clock A. M. December 3rd, 1901.

Parties met pursuant to adjournment.

James E. Boyd, a witness produced and sworn on behalf of the defendant was examined in chief by Mr. Jenks and testified as follows:

Q. Governor Boyd, will you state your full name?

A. James E. Boyd.

Q. Where do you live? A. Omaha, Nebraska.

Q. How long have you lived in Nebraska?

A. Over 45 years.

Q. Have you held any official position in the state of Nebraska? A. Yes sir, several.

Q. What official position?

A. Member of both constitutional conventions, member of the legislature, mayor of Omaha and governor of the state.

Q. When were you governor of the state and for what length of time? A. '91 and '92.

Q. What is your business?

A. Dealing in grain, provisions, stock, bonds and so forth.

Q. How long has that been your business?

A. This last time about 5 or 6 years.

Q. How long in all?

A. I was on the Board of Trade here four years.

Q. What four years? A. '85 and '9—to '89.

Q. '85 to '89?

A. Yes, sir, some time in those years, I don't know, about four years all together; I would not be certain.

Q. Were you a member of the Chicago Board of Trade?

A. Yes sir.

Q. Covering what period of time were you such member?

A. The period that I have stated, '85 to '89 or '90. I
806 have owned six memberships.

Q. At the time you were a member of the Chicago Board of Trade what was your business?

A. Buying and selling grain and provisions on the Board of Trade; general commission brokerage business. The firm name was Boyd, Paxton and Boyd, I will say for a while.

Q. Where was the office of that firm?

A. Then where Canby's office is now, I think it is Number 8, Board of Trade.

Q. Was it in the Board of Trade Building? A. Yes sir.

Q. What was the principal business of that firm, what kind was the principal business, commission business, or was the principal business a brokerage business?

A. Well, sir, it was a commission business, the principal part of it. I heard a distinction here yesterday between the commission business and brokerage business, but I have never heard it defined that way before.

Q. Who were the customers of your firm, I mean generally where were they, what class of people were they, city people, country people or what?

A. Both city and country. I had a great many customers from Nebraska and Iowa.

Q. How extensive was your line of business?

A. Well, we did a very large business; supposed to do about the third largest business on the Board at that time.

Q. Amounting to how much in deals was the business on the floor of the Exchange Room, per day, week month or year?

A. Well, sir, I could not tell you that. I have been out of business for 12 or 13 years and I could not tell you. I know it was very large.

Q. What do you mean by very large?

A. In grain do you mean?

807 Q. Yes.

A. Well, a small day's business would be a half a million.

Q. Bushels? A. Yes sir. A good day's business—

Q. And a large day's business?

A. Well I have dealt in as high as four or five million bushels a day.

Q. Have you any means of estimating what it would average per day while you were in business? A. I have not.

Q. The business that was done at your firm and the trades made by them doing business on the floor of the Exchange Room of the Board, was what kind of business, a commission business or were you dealing on your own account?

A. Both. I have dealt on my own account.

Q. Which principally?

A. Oh, a commission business of course.

Q. Will you describe in what manner the commission business is done on the Board of Trade and with your customers, commencing with the initial transaction with your customers?

A. Well, I had five or six brokers on the floor, and when an order was received in the office to buy or sell twenty-five or fifty thousand bushels of grain it was given to the broker to execute it in the pit.

Q. Then what was done if executed?

A. Well, if it was a purchase he would purchase it for some one and report it to the office, and we would report it to the customer.

Q. In what manner was the trade executed on the floor?

A. Well the broker, if he wanted to buy twenty-five thousand bushels of wheat, he would say, will buy twenty-five thousand bushel of wheat at such price and some broker might say, "Sold" and the transaction was made.

808 Q. Then if that transaction was made what was done right there on the floor with reference to that by the two parties?

A. Well sir, every firm have trading cards and when a purchase or sale is made, the broker puts it down and before he leaves the pit he checks it up with the party from whom he purchases it, or to whom he sold the grain.

Q. The trading cards that each member would have on the floor compared with the one I now hand you were in what shape?

A. Well, about similar to those I suppose. (Indicating a card produced by counsel for defendant.)

Q. You notice that one, there is a hole cut through it?

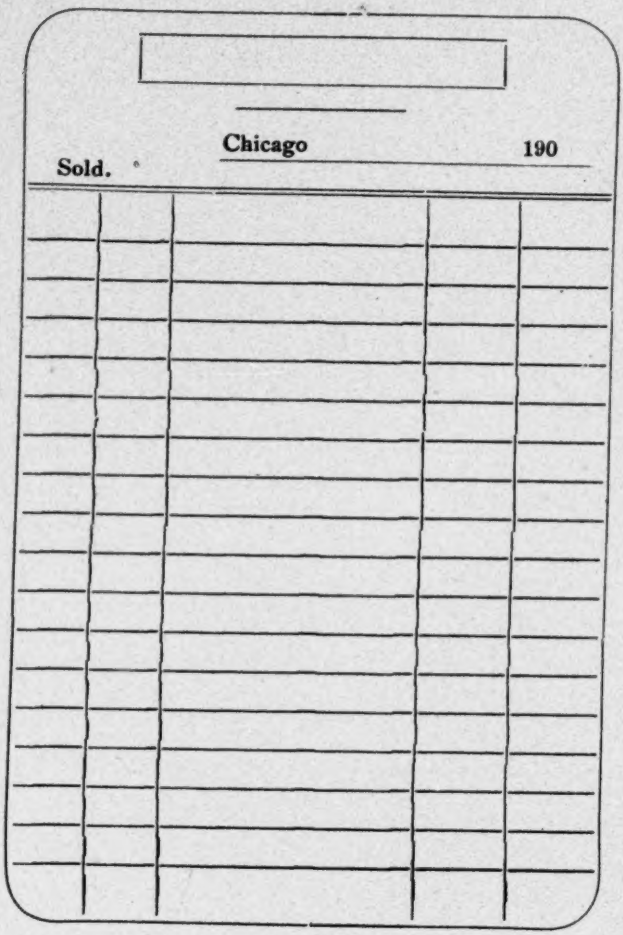
Q. That is the name of the firm I suppose, cut out.

Q. Yes sir. Now each trader there on the floor would have a trading card like that? A. Yes sir.

Q. With his name on it would he?
A. Yes sir, each broker.

Mr. Jenks: I offer that card in evidence as Defendant's Exhibit 2.

(Thereupon said card was admitted in evidence and marked Defendant's Exhibit 2, and is as follows:


Chicago 190
Sold.

Chicago 190

Bought.

Q. On one side of the card is sold, on the other side bought, is it? A. Yes sir.

Q. Now the broker on the floor who has that card, in making transactions there at the pit, suppose he bought several different lots; he would put that down on the bought side would he?

A. Yes sir.

Q. And if he sold several different lots, he would put that down on the sold side? A. Yes sir.

Q. What would he put down there as to the name or names of the persons with whom he had the transactions or deals?

A. He would put down the name, which is quite often changed I will say, because they might come around and say to *him will* you put down that 5000 bushels of wheat to another firm; then he would comply with that request and put it down to that firm.

Q. Then when he went to the office what would he do with this card?

A. It is turned in; the parties are notified that evening of the transaction.

Q. Turned in where? A. Into the office, to the clerks.

Q. Then, what would the clerk do with the card?

A. I think they made out a notice and notified the parties with whom they had dealings.

Q. What would they do with reference to the books of your firm? A. Well, it was entered on the books.

Q. Entered on what kind of a book, what did you call the book? A. Well, there are different books.

Q. On what book would that be entered, if you had bought for future delivery for the customer?

A. Well, it would be entered on a book that was kept for that purpose.

Q. What did you call the book?

A. Well sir, I could not tell you.

811 Q. Do you know anything about an option book?

A. Oh yes.

Q. Would it be entered on that book?

A. Yes sir. I will say however, that I never kept the book.

Q. Then if those transactions were entered on the book what was the next thing done by your firm?

A. There was nothing done about that particular order, until we had an order to close it, either to buy or sell as the case might be.

Q. That is, with your customer?

A. With our customer, yes sir.

Q. And what was done with reference to the transactions on the Board?

A. We had settling clerks that rung up trades frequently.

Q. What were the duties of the settling clerks?

A. To see from whom we had bought or sold wheat and see if we could ring it up and cancel the trades without going through the clearing house.

Q. How soon after the trades were made before the settling clerk would start out to see whether he could ring up the deal?

A. That was done daily, every day.

Q. Then with reference to these deals were they rung up wherever they could be? A. Most assuredly.

Q. And if they were rung up what would be the process of ringing them?

A. Well it was described here yesterday. Supposing I bought ten—

Q. Never mind the description.

A. Supposing I bought 10,000 bushels of A and he bought 10,000 of B and B bought 10,000 of C and then C bought 10,000 of me, that trade would ring up.

Q. Yes, and when it did ring up what was the process of closing and ringing it?

A. Well so far as the Board of Trade was concerned, that trade was off our books entirely and so far as the cus-
812 tomer was concerned, the trade remained on our books unless he had given an order to close it.

Q. How would it be rung up, how was it rung up?

A. I have just described it to you.

Q. No, you have described the ring. A. Yes.

Q. Now I want to know how it was closed and ended. When your settling clerk would find out that there was a ring, what would he report at the office?

A. Well he would report that he had settled the trade, that he had rung up the trade.

Q. Did the clearing house have anything to do with it?

A. I think not.

Q. At that time was there a Board of Trade clearing house?

A. Yes sir. I think so at that time.

Q. Now when you ascertained that trades would ring up, state whether a clearing house sheet was made out and sent to the clearing house.

A. Well sir, I could not answer that question but I think not. You see it has been so long ago that I am not attending personally to the business myself, only knowing how it was done; it has been 12 years since I have been a member of the Board, I guess, or 11 years.

Q. While you were doing that kind of business on the Board of Trade was the business conducted by your house the same as business was conducted by other Board of Trade houses engaged in the same line?

Mr. Robbins: Wait a minute. I object to that.

The Master: I think that is a conclusion. He can state how they did at their business.

Mr. Robbins: If he knows.

Mr. Jenks: How did other members of the Board of
813 Trade do their business in comparison of the manner in which you did yours?

Mr. Robbins: Objected to. That is the same question over again.

The Master: Is that the same question?

The Witness: Shall I answer?

Mr. Jenks: How did other members of the Board of Trade conduct their business?

Mr. Robbins: If you know.

A. Yes sir, I know.

Mr. Jenks: Q. Well answer it.

A. Well, they conducted it in about the same way that we did.

Q. Now if that deal was rung up that you have described, how would it be settled?

A. By paying the difference in price, if there was any, to the parties from whom the trade—with whom the trade was made.

Q. That is, the members of the Board of Trade?

A. Yes sir.

Q. Will you state whether those trades were rung up as soon as possible after they were made?

A. Most assuredly.

Q. And the trades that were rung up, what were they as to futures?

A. Oh they might be for any particular month, December, May, July or September, any month.

Q. But they were all future deals, deals in futures?

A. Well, I don't know that I ever did much of a cash business; yes they were all deals in futures.

Q. And the ringing up with reference to the time when the commodity was deliverable would be when, before that day arrived or after?

814 A. Before the option matured, of course.

Q. Now with reference to ringing up those deals with other members of the Board of Trade, what had your outside customers to do with that? A. Nothing whatever.

Q. Would these deals be rung up on the Board of Trade, notwithstanding the fact that the trade with the customer remained open?

A. Yes sir, and when the trade that I have described had been rung up I might have 25,000 wheat bought for a customer in Nebraska and I might have 25,000 sold for a customer somewhere else, and on my books it would show 25,000 bought for one person and 25,000 sold for another, but so far as the trade on the Board of Trade was concerned, it was entirely wiped off.

Q. Then how would the customer get out of the deal providing he has purchased 25,000 bushels of July wheat?

A. Well sir, he would order me to sell probably, 25,000 bushels of July wheat and I would order the broker to sell it and report to him the sale.

Q. What would you report to him?

A. Sold 25,000 bushels of wheat at a certain price.

Q. Would you report anything else to him?

A. No, sir, only the—only send him a statement of his accont.

Q. Account purchased and sale? A. Yes sir.

Q. And the difference in cash, would that appear on the account? A. Certainly that would be paid him.

Q. That difference would consist of wheat?

A. The difference between the price he purchased at and the price he sold at, if it was in his favor, we would send him a check for the amount, the difference, if it was against him we would take the amount out of his margins and send him
815 the balance if he so requested.

Q. Was there anything about commissions in these deals? A. Oh yes, charged a regular commission.

Q. What was the regular commission?

A. An eighth on wheat, corn and oats.

Q. Now, would you charge your customer whenever the purchase was made an eighth of a cent commission?

A. Yes sir, I think sometimes commissions were cut, I don't remember exactly, but I think there was some done less than an eighth.

Q. That was for the purchase?

A. Purchase and sale, that was for both.

Q. Was the sale during your business, ever made for a customer after the delivery day for the commodity purchased?

A. Yes sir, I have had wheat delivered to me.

Q. As a rule when was the sale made of the commodity purchased, before or after delivery day?

A. Almost entirely before.

Q. Wherever the purchase was made and the sale made before delivery day, was any commodity bought or sold delivered?

A. No, it could not be delivered when it was sold before.

Q. Was any commodity paid for?

A. What do you mean? I don't understand the question. Before delivery day?

Q. Yes sir.

A. No sir, I don't think any grain was delivered before delivery day.

Q. Was it paid for before delivery day?

A. Why, if you bought grain for cash it was paid for before delivery day or when it was delivered.

Q. Well, if it was cash it was deliverable right off?

816 A. Yes sir, right off.

Q. Then it would be paid for when it was delivered?

A. Yes sir.

Q. I am talking about deals for the future.

A. Well it certainly could not be paid for before the delivery day because it would not be offered to you.

Q. Then in all of these trades rung up, there was no delivery of the commodity and no payment for it?

A. No delivery, certainly, no, none whatever.

Q. Well was there payment for it?

A. No sir, no payment for it, it was a payment of differences.

Q. What property in your business on the Board of Trade resulted in having the deals rung up and settled by a mere payment of differences in market values and what proportion resulted in actual delivery and payment for the commodity?

A. Well that would be a pretty hard question for me to answer, what proportion, because we were not a receiving house, we had no elevators or anything of that kind; we only received wheat when it was absolutely necessary. We tried to avoid receiving or delivering as much as possible because of the expense attending it, and that is why we wanted these trades rung up.

Q. Well can't you estimate that by the per cent?

A. Well sir, it was a very small per cent.

Q. How small?

A. I don't believe it was one-half of one per cent.

Q. Of the actual deliveries? A. Yes sir.

Q. Without ringing up?

A. The actual deliveries, the ringing up was the balance.

Q. The trades that you made were usually rung up before the day of delivery? A. Yes sir, almost invariably.

Q. How was it with your customers, your outside cus-

817 tomers? Were those trades usually settled with your customers before the day of delivery?

A. Yes sir, because there is not one man in a thousand that wants to receive or deliver the wheat.

Mr. Robbins: I move to strike that out.

The Master: That is stricken out.

Mr. Jenks: What do you strike out.

The Master: "Because there is not one man in a thousand that wants to receive or deliver wheat."

Mr. Jenks: While you were in the business, were any statements made by your customers, or any of them, to you as to whether they wanted to receive and pay for the actual stuff that you bought on commission?

A. I have already said that I did not believe that I ever received one-half of one per cent of the amount traded in.

Mr. Jenks: Read the question to him.

(Question read.)

Mr. Robbins: I object to that as irrelevant.

Mr. Jenks: For them?

The Master: He can state.

A. Do you mean to ask me if any—

Mr. Robbins: This is in the brokers office.

Mr. Jenks: Q. I mean to ask you if any of your customers told you that they did not want any stuff. A. Yes sir.

Q. That they wanted to speculate in market prices?

A. Yes sir, I can answer that question.

Q. No what proportion of the customers that you had were of that kind? A. 99 per cent or over.

Q. Did it make any difference in your executing the orders on the Board of Trade, whether your customers had told
818 you that they did not want to receive any commodities that might have been bought on that account?

A. Let me tell you what I would do. When an option was about to mature I would telegraph him and change it over or close it out.

Q. That is not what I asked. A. That is the answer.

Q. In the initial transaction, when they would order you to do something on the Board of Trade the first thing—

A. Yes sir.

Q. Did you have any customers who would tell you that they did not want to receive or deliver the commodities but wanted to speculate on the market and settle the transaction upon differences in market prices?

A. Well, I have had them say on the Board, that they wanted to make a scalp. I suppose that was, they meant to buy and sell and make some money without delivering the stuff.

Q. Well, those were members of the Board of Trade?

A. Yes sir.

Q. I am speaking now of your outside customers?

A. Oh yes sir.

Q. For whom you were doing business on commission?
A. Yes sir, I have had them tell me they bought such and such thing for a scalp.
Q. Now I ask you whether it made any difference in your executing their orders on the floor? A. No sir.
Q. Whether they had told you that they did not want the stuff? A. Not a particle.
Q. The orders would be executed just the same way, whether you knew they wanted the stuff or whether you knew they wanted to speculate in differences in market price?
A. Certainly it would be executed according to the rules and regulations of the Board.
819 Q. How frequently were you on the floor of the Exchange room during business hours?
A. Well sir, I was here about one week out of the month and I was on the floor every day during the time I was here. I could not say how long each day but every day.
Q. While you were connected with this Board of Trade house as you have stated, where did you live?
A. Omaha, Nebraska.
Q. While you lived there and were connected with this house, did you send orders to the house to buy or sell for customers? A. From Omaha?
Q. Yes.
A. No sir, I told the customers to send it themselves, if anybody asked me about it. I did not do any business in Omaha at that time at all.
Q. Did not do any? A. No sir, was not in business.
Q. While you were in business with that house, was there any such thing as stop orders, that you knew about?
A. Yes sir, frequently.
Q. What is the stop order?
A. Well it is to stop the loss on a trade, if it is a purchase they put it below the market; if it is sold they put it above the market generally, to stop their loss at a certain price.
Q. The customers would do that? A. Yes sir.
Q. Did it make any difference in the execution of that order on the Board of Trade whether there was a stop order connected with it? A. No sir.
Q. It would be executed the same—
A. Same manner, yes sir.
Q. Now if a—
A. I was going to say only this: that if I had a stop loss order to stop wheat to-day at 78, I think that is about the price, 78½, stop it at 78, why we would stop it maybe at 78 1-8
820 or 78 2-8, we would be sure to stop it if we could.
Q. You don't understand my question. Suppose you got an order to purchase with a stop order to limit the loss.

first
Would that make any difference in your executing the order to purchase? A. No sir, of course not.

Q. Then if there was a loss in the transaction, if it had been a purchase, and wheat went down in the market, if you had a stop order, would you wait for another order from the customer before closing out that deal?

A. Orders are usually given for one day. They sometimes stay open. Now I will explain to you, if I had the order—

Q. You need not do it. I wish you would pay attention to the question and just answer it. When you got an order for a purchase and a stop order with it to limit the loss, and you made the purchase and the commodity went down in the market so that there would be a loss, would you wait for another order from your customer before closing out that deal or would you close it out on the stop order that you already had?

A. Why certainly, close it out on the stop order I already had.

Q. Yes. A. Unless he countermanded it.

Q. Then after you had closed it out on the stop order, what report would be made to your customer?

A. It is a similar report of purchase and sale.

Q. Just the same as though he had ordered the closing out?

A. Yes sir, because he really had ordered it.

Q. And you would settle between yourself and the customer in the same manner to wit, by paying to him or receiving from him the difference in the market prices deducting your commissions? A. Yes sir.

Q. While you were in the business was there any such
821 thing as offsets, for instance, you would make a purchase from a certain member of the Board; you would make a sale to the same member of the same commodity and amount for the same delivery, did such things occur?

A. Oh yes, yes sir.

Q. Then would that be an offset? What would you do in case you found that state of affairs to exist?

A. Well I suppose that trade would show on the clearing house sheet as we claim from or owe to a certain man—

Q. I don't want you to suppose anything.

A. Well, it would then.

Q. Now is there such a thing as making a direct settlement between you and that other member of the Board of Trade?

A. Yes sir, he could come into my office and pay me the difference or receive a check for his difference.

Q. Did you have cards at that time representing offsets?

A. The same card was used, no [especially] card that I know of.

Q. Look at that card and state whether at that time you had such cards in use. (Handing witness a card).

A. Oh I suppose you meant a trading card. Yes sir we had just such cards as those.

Mr. Jenks: I will offer that card in evidence and have it marked Defendant's Exhibit 3.

Thereupon said card was admitted in evidence and marked Defendant's Exhibit 3, and is as follows, to wit:

Chicago 190

We claim from you on offsets to-day as follows

$

Chicago 190

We owe you on offsets to-day as follows

$

Q. Under what circumstances were those cards used?

A. As between firms and brokers when they owed or claimed from them so much money—owed to or claimed from them.

Q. Did they also have in use on the Board of Trade, at the time you were dealing there, cards to confirm deals between members of the Board?

A. There were cards sent out each evening to the different firms of what they had done, the transactions during the day.

Q. Will you look at this card which I now hand you, and state whether that kind of a card was in use at that time?

A. Yes sir, something similar to it, or that kind. I could not swear to it positively.

Mr. Jenks: I offer that card in evidence as Defendant's Exhibit 4.

Mr. Robbins: It is already in.

Mr. Jenks: Did you put it in?

Mr. Robbins: It was put in on cross examination.

(Which card was admitted in evidence and marked Defendants Exhibit 4 and is in the words and figures

Chicago_____190

We hereby confirm Purchases made by us to-day under the rules of the Chicago Board of Trade, as follows, of

Amount	Delivery	Kind of Property	Price

Chicago,_____190

We hereby confirm Sales made by us to-day under the rules of the Chicago Board of Trade, as follows, to

Amount	Delivery	Kind of Property	Price

Mr. Jenks: Q. Under what circumstances were those cards used?

A. Well, sir, as I stated, this card is used to notify firms of the purchase—of the transaction between the two houses, between our house and some other house either purchases or sales.

Q. At the time you were operating on the Board of Trade did they have such things as delivery notices?

A. Oh yes, yes sir.

Q. Will you look at the paper which I now hand you and state whether that is a blank for the kind of notice that was given at that time? (Handing witness a paper.)

A. Well, as I said before I have been out of business for a long while; I know they had delivery notices at that time but whether this is the exact language and form, I cannot swear to.

Q. Under what circumstances were those notices given?

A. When wheat was delivered to us we generally sent out a notice to some one to whom we had it sold.

Q. At the time you were operating on the Board of Trade did they have representatives of each house on the floor, certain hours of the day, to receive deliveries?

A. Yes sir, delivery clerks.

824 Q. Were those deliveries made by notice passed around from one to the other?

A. Well yes, certainly; sometimes by the receipts themselves.

Q. Were the warehouse receipts ever handed from one to the other there on the floor of the Exchange Room?

A. No sir, that was in the offices.

Q. Whose offices?

A. In the offices of the different firms.

Q. Now if you will pay attention to the question we will get along better. I asked you how deliveries were made on the floor between the different representatives of the different houses in the hours of the day when they congregated there?

A. By notification.

[A.] And that notice would be the notice of what?

A. Something similar to the one you handed me, I can't tell you the exact language.

Mr. Jenks: Well I didn't offer that. You have no objection to it I suppose, Mr. Robbins?

Mr. Robbins: I have no objection to it.

Mr. Jenks: It is a delivery notice.

Mr. Robbins: No, anything that is a direct notice

Mr. Jenks: There is one that I—

Mr. Robbins: I am not going to make any stipulation with you about that.

Mr. Jenks: I will offer this delivery notice in evidence and ask to have it marked Defendant's Exhibit 5.

Mr. Robbins: Well I object to it.

The Master: Objection sustained. It has not been sufficiently identified by the witness.

Mr. Jenks: Well, that is true.

Mr. Robbins: Well, that is a nice way to take rul-
825 ings. I wish we could all do it with as much equanimity as that.

Mr. Jenks: Well, I offered that because I understood you would not object to it. As you do, I put it back in the bundle as I did before.

Q. The notice of delivery would be substantially in form—

A. Notice that we had so many thousand bushels of wheat which we had sold to a certain firm and we were ready to deliver.

Q. Well would it be a notice that you had the warehouse receipt?

A. No sir, it would be a notice that it was about to be—we had the same notification, same kind of notification from other parties.

Q. I am getting at the original notice that passed around on the floor of the Exchange Room of the Board of Trade: I am not asking for the notice that you would give your customer.

Mr. Robbins: He said he did not know what the notice is, Mr. Jenks. Put somebody on the stand that does. Mr. Boyd out in Omaha didn't deliver the property in his business.

Mr. Jenks: Now at the time that you were doing business on the Chicago Board of Trade or your house was doing business there, was there any such thing known as hedging trades?

A. Yes sir.

Q. What is hedging trade?

A. Well sir, I have done a great deal of hedging myself; I can explain to you what I have done myself.

Q. On the Board of Trade?

A. On the Board of Trade, but it was mostly in provisions.

Q. Go on.

A. I was in the pork packing business 15 years and when I thought or had an idea that provisions were going to decline, I would sell on the Board of Trade and I have sold hun-
826 dreds of thousands of dollars worth of stuff on the Board of Trade; if I thought it was going to advance, I would buy: that was to protect myself from loss on the amount of stock that I carried in my warehouse.

Q. Then how did you close out those hedging deals?

A. Well, if I had bought it on the Board of Trade I would order it sold, after I had sold my produce in the west. I had a packing house in Omaha.

Q. And how would you close up the hedge deal?
A. That would close it up.
Q. Well you order sold and it would be sold? A. Yes sir.
Q. Then what would be done to settle it?
A. A statement made to me of the difference.
Q. And did it require any payment?
A. Always payment of—
Q. Payment of what?
A. From one side to the other, loss or profit, where I made a profit they would pay me and if I made a loss I would pay them.
Q. That is, either one side or the other would pay the difference in the market price?
A. Pay the difference in the market price, yes sir. Now I will explain to you if you will permit me, that I said I did this for the purpose of protecting myself from loss. The product that I made in Omaha Nebraska mostly went south; I never expected to ship it to Chicago, except a small portion of it.
Q. What did you expect at the time you made the deal on the Chicago Board of Trade as to delivery on that deal?
A. I did not expect to deliver it, I expected to protect myself from loss.
Q. Whether you expected to deliver it or not, did it make any difference in your ability to make the deal on the
827 Board of trade? A. Not a particle.
Q. Now when you had made a hedging deal on the Board of Trade, state whether you would hold that commodity which you had in hand for that purpose of delivering on the Board of Trade contract?
A. No sir, I did state that most of my stock went south, never came to Chicago at all, a better market.
Q. When you had the stuff would it make any difference in your selling that stuff somewhere else owing to the fact that you had a contract on the Chicago Board of Trade?
A. Certainly not.
Q. Now if you had the actual commodity on hand and made a hedging deal on the Board of Trade would that deal be a purchase or a sale of a commodity of the same kind for delivery then
in the future?
A. It might not be a purchase or sale of the same kind of product that I had on hand, but it would be in provisions; it might have been barrel pork that I sold, it might have been lard that I sold and it might have been short ribs, sides or hams, that I had in my cellar, in my warehouse.
Q. Very well, but the object of my question was this: to find out whether the hedging deal was for future delivery while you might have the product on hand at the time?

A. Always for future delivery.

Q. Did you ever deliver anything on hedging deals on the Chicago Board of Trade?

A. No sir, I don't think I ever did, but I have delivered stuff in Chicago.

Q. Well, if you will answer my question we will get along. Did you ever deliver anything on hedging deals on the Board of Trade?

A. Well then I will say that I can't remember; I don't think I ever did, but I am not positive.

Q. How extensive were your hedging deals?

A. I have already stated that I have bought and sold hundreds of thousands of dollars worth of stuff, millions
828 probably, millions of dollars worth, I was in business 15 years.

Q. Do you know anything about hedging deals on the Chicago Board of Trade except those that were conducted by yourself or in your own behalf? A. Yes sir.

Q. Will you state what was the course of making hedging deals by other people, so far as you know?

A. Well in the corn states—I will speak of corn particularly. There is a great deal of corn cribbed and the parties who crib the corn usually sell it for May delivery and thereby gain the benefit of the carrying charges and such things between the cash price—the difference in the cash price and the difference on the May option. I have known men to hedge hundreds and thousands of bushels of corn in that way on the Chicago Board of Trade, but the demand for corn might be more urgent in the south, in Baltimore and St. Louis, and they would ship that corn to St. Louis or Baltimore, or Galveston from our part of the country, and when they were ready to do that they would close their hedging deal on the Chicago Board of Trade.

Q. How?

A. If they had sold the corn they would order it bought in.

Q. And how would that close up the two transactions of purchase and sale?

A. Why render a statement of the difference in price and by paying or receiving the difference.

Q. The difference in the market price?

A. The difference that the price sold and bought at.

Q. So that the hedging deals conducted by other people that you knew about were conducted in the same way as your own?

A. About in the same way, yes sir.

829 Q. But the fact that the hedging deal was open on the Board of Trade had nothing to do with the party's selling his commodity somewhere else had it?

A. Nothing at all.

Q. Now we will come to what you did mention in your testimony, and that is scalping deals on the Board of Trade, do you know anything about those? A. Yes sir.

Q. What is meant by the word scalp on the Board of Trade of Chicago?

A. Well sir, I take it that a man wants to make a little money and close his trade out after he makes a little money and not to receive or deliver the stuff at all, no idea of that.

Q. How many members of the Board have you known to transact that kind of business on the floor of the Exchange room?

A. I have known a great many, I think it is done every day.

Q. Do you know where those trades are made on the floor, with reference to the pits?

A. Made in the pits, or if it is oats, outside the pits.

Q. How.

A. If it is oats it is outside of the pit, there is no pit for oats as I understand it. Corn, wheat and pork.

Q. Well perhaps nowadays there is an oat pit there.

A. No.

Q. There was none when you used to be there?

A. None when I used to be there.

Q. Do you know anything about the manner in which market reports are and have been gathered on the floor of the Exchange Room of the Board of Trade?

A. Gathered by the Western Union Telegraph Company for many years.

Q. I merely asked you if you know?

A. Yes sir, they were gathered by the Western Union Telegraph Company.

Q. At the time you were there from what particular place on the floor were the markets gathered?

830 A. Well sir, in the wheat pit there was a box where the reporter sat and he watched all the trades that were made, and listened to all the trades that were made and sent them to the telegraph operator.

Q. I am speaking now of the continuous market reports?

A. That is the continuous market reports that I am speaking of.

Q. Did you observe of what transactions at the pits a report was made? A. Every change in price.

Q. Did you observe whether a report would be made of a hedging deal or a scalping deal just the same as any other at the pit?

A. How would the reporter know whether it was a hedging or a scalping deal? He could not do it; it is all the same.

Q. Would it be just as easy to answer the question.

A. It is all the same.

Q. Reports were made of all deals that were there, wherever there was a change in price, is that correct?

A. I have stated that.

Q. In these scalping deals Governor, did you observe when those deals would be closed out with reference to the time of the original transaction?

A. Some might be closed out in ten minutes, some in an hour, and some not for quite a while, for many days.

Q. As a rule were they generally closed out by scalpers on the same day that the initial transaction was made?

A. Yes sir, I think so.

Q. So that he would go home at night feeling happy that he had no trades open to worry him?

A. A good many brokers do that.

Q. And do they settle up the scalping deals, the same as they settle up any deals that are merely crossed off and ended by paying the difference in market prices? A. Yes sir.

831 Q. Have you known the extent of the business of other brokers per day, week, month or year on the Board of Trade in options?

A. Well, I have had some idea of it, only by just seeing and knowing what is done; it is pretty hard to tell what another firm is doing all the time; they rather intend to keep that secret.

Q. Well have you been so situated that you would know about the extent of the dealings in options of other brokers on the Board of Trade or other commission houses?

A. Yes sir, I have; of course I could form a very good idea of it. I have stayed in the pit and watched what was done and who did it.

Q. How were those transactions by other firms that you know about, extensive or small?

A. All kinds sir, some very large and some very small.

Q. What do you mean by very large—

A. Some houses dealt in millions of bushels.

Q. Wait a minute. I want to change that question. What do you mean by very large deals in options on the Board of Trade?

A. Well, I would call two or three million bushels very large dealing in a day; one million bushels would be considered a fair dealing in a day.

Q. Have you had any occasion to notice how many of those deals resulted in actual delivery and payment for the commodity and what proportion of them resulted in being rung up and settled by paying the difference in market prices?

Mr. Robbins: The [—] objected to. The witness has not qualified himself yet with reference to other members of the Board of Trade.

The Master: That may be answered yes or no. He may answer—have you had any occasion to observe that,
832 that is the question.

A. Yes sir, I knew about what actual deliveries were made during the month.

Mr. Jenks: Q. What was the proportion of actual deliveries compared with the transactions?

Mr. Robbins: Wait a minute.

The Master: You are confining this back to '91 are you not, Mr. Jenks?

Mr. Jenks: To the time that he knew about.

Mr. Robbins: When was that?

The Witness: '85 to '9, somewheres in there.

Mr. Robbins: I object to that as too remote, and I also object to that because the witness is only now testifying to his own trading in the pit while Mr. Jenks' question asks him the proportion of trades in the pit to the trades settled by rings. The evidence is that there is no settlement in the pit at the time the trades are made and this witness has not qualified himself to guess on the number of settlements made by the 1800 members of the Board of Trade.

(Question read.)

The Master: During this period from '85 to '89.

Mr. Jenks: During the period you knew about.

Mr. Robbins: He says he knew about actual deliveries but he don't know about the amount of settlements, he can't know.

The Master: He may answer.

A. Well, I should say that it was very small.

Mr. Jenks: Q. What do you mean by very small?

A. Well sir, I would have to compare that and answer
833 that question by my own rule, it was not one per cent of what was dealt in.

Q. Since you ceased to be a member of your firm that was dealing on the Board of Trade, have you had any deals on the Chicago Board? A. Yes sir, a great many.

Q. And since you ceased to be a member of the Board?

A. Yes sir.

Q. Through whom was those deals made. I don't mean the individual, but whether he was a member of the Board or what he was? A. Certainly they were members of the Board.

Q. How extensive have your dealings on the Board of Trade been since you were a member of the Board?

A. A great many hundreds of thousands of bushels.

Q. Covering what period of time?

A. Up until two years ago, or a year ago, a year and a half ago.

Q. Well come now— A. A year and a half ago.

Q. And covering what period of time?

A. Well, sir, I have dealt on the Board of Trade since 1872, up until a year and a half ago.

Q. Now during the time that you were dealing on the Chicago Board of Trade through some other member of the Board, what amount of commodities did you receive and pay for in the transactions that were had there on your account, after you ceased to be a member?

A. Well I have never received or delivered a bushel.

Q. Were you ever called upon by a member of the Board of Trade to receive or deliver a bushel?

A. No sir, I have always protected, attended to that business myself, and before delivery day I had it provided for.

Q. Provided for how?

A. By either closing the trade or selling it for a future option if I had bought.

834 Q. How can you sell it for a future option and how can you close the trade?

A. Well I will have to explain to you. Supposing I had 50,000 bushels of wheat bought for December delivery, I would not wait until the first day of December, although I have waited for the first of the month occasionally, but I would sell the December and buy May.

Q. And by that sale of December, how would that transaction be closed up between you and the member of the Board who conducted it?

A. Send me a statement of my account showing me the price at which it was bought and at which it was sold, paying me the difference if any, or I paying them.

Q. The difference in market price?

A. The difference in market price.

Q. Now for what purpose did you have those deals on the Board of Trade? Were they for the purpose of and intention of receiving or delivering the commodity or were they for the purpose of speculating in the difference in market price and making money that way? A. For speculation entirely.

Q. Then you have stated that you sometimes closed the December deal by ordering a sale and buying in for May, what would be done with the May deal?

A. I could close it any time before the first of May or I could hold it until the first of May.

Q. What did you do?

A. Sometimes closed it long before the first of May. Sometimes waited until the last day of June and then closed it.

Q. And all of those deals were made in what way?

A. In the same way that I have heretofore stated. If I had sold I would buy in the grain; if I had bought I would sell it.

Q. And none of those deals ever resulted in a delivery
835 of anything?

A. No sir, I never received or delivered a bushel of wheat while I was not a member of the Board.

Q. Did you deal on the Chicago Board of Trade in anything but wheat? A. Oh yes, grain and provision.

Q. Were all of your deals there through some other member of the Board, closed out in the same way? A. All of them.

Q. At the time those deals were made, did you have the intention of even receiving, delivering or paying for the commodities traded in?

A. You have reference now to the time I was not a member of the Board?

Q. Yes sir.

A. Since that time I have never expected to receive or deliver anything. Purely speculation.

Q. When did you cease to be a member of the Board of Trade?

A. I could not tell you the exact date but I guess it was in 1890. I sold four or five memberships. I have one membership but it is not in my name; another man using it.

Q. Governor while you were dealing on the Board through some other member of the Board and you did not expect to receive, deliver or pay for anything did you ever tell your broker on the Board what your intentions were in that matter?

A. Well sir, I could not tell you whether I did or not but that was not necessary.

Q. Why was it not necessary?

A. Because I had the privilege of closing any time I chose.

Q. Where did you get that privilege?

A. Well that is a pretty hard question to answer. I think it is inherent in every man to do business as he pleases if he can.

Q. But so far as a broker on the Board is concerned?

A. Well, I would telegraph the broker to buy or sell.
836 Q. And he always did it without reference to receipt or delivery of the commodity?

A. Well he always obeyed my orders.

Q. And is it always the case that if you had a commodity purchased, that you could close it out before delivery day if you wanted to? A. Why certainly.

Q. Did that question ever come up in any way as to whether you could do that before, close out the deal? A. I think not.

Q. Governor Boyd, in dealing in futures, that means dealing in a commodity for future delivery, does it not?

A. Yes sir.

Q. What are and have been the usual months on the Chicago Board of Trade in which futures as to wheat are dealt in?

A. They can deal in every month but the months are mostly December, May, July, September and then December again.

Q. Now suppose there is a deal in May wheat; when is the delivery day on the Chicago Board of Trade for that wheat, that is, May?

A. The first day of the month is the delivery day but it can be delivered, if it is sold, any time during the month.

Q. The delivery is at whose option?

A. At the sellers option.

Q. Do you know why as a rule, the deliveries are made on the first day of the month?

A. That is the first day that deliveries can be made.

Q. The first day that deliveries can be made is the first day of the delivery month under the contract? A. Yes sir.

Q. But at the seller's option he may take every day in that month for the delivery if he wants to. Now do you know of any reason why the deliveries are made on the first day of the month and why the seller usually wants to deliver on the first day of the month instead of waiting until the last day of the month?

837 A. To get his money I suppose, for the wheat.

Q. Anything else?

A. To stop warehouse charges and interest on the money, and insurance.

Q. And that is the reason why the deliveries for the month are usually made on the first day?

A. Well those are some of the reasons but there are other reasons I suppose. I presume that large deliveries are made sometimes by men who have the commodities in order to break the market; I have known such things and I have known the grain to go right back into their possession again, or the receipts or the notice, whatever it is.

Q. In all of your transactions connected with the Board of Trade where deals were made and it was found that there was a ring, the same party had the property bought and sold, did you ever know of a case where any man in that ring refused to settle by the ring?

A. I can't call to mind any sir. It may have been done but I can't call it to mind.

Q. Governor Boyd can you say then you are familiar with the practice and the custom of the members of the Board of Chicago

Trade as to manner in which deals for future delivery were settled?

Mr. Robbins: What is that, repeat that?

(Question read.)

Mr. Robbins: I object to that, he says he has not seen the inside of the Board of Trade for five years.

The Witness: Yes I have sir, I have been in there this year.

Mr. Jenks: Do you object to that?

Mr. Robbins: Yes.

Mr. Jenks: He has already answered it.

838 Mr. Robbins: That is another ground for objection then if he has already answered it.

(Question read.)

The Master: During the period that he was on the Board of Trade.

Mr. Jenks: Yes, or any time that he knows about it.

Mr. Robbins: He has said he don't know anything about it since '94.

Mr. Jenks: He didn't at all.

Mr. Robbins: He has stated that is the last time he has been in a position to know. It is not enough to ask a man whether he is capable of forming an opinion; you have got to lay the facts before the court so he can judge.

The Master: Let him answer prior to '94.

The Witness: '85 to '89.

Mr. Jenks: You can answer the question.

The Master: As to that only.

A. I am familiar and was at that time familiar with it.

Mr. Jenks: Q. Have you been familiar with it since then?

Mr. Robbins: I object to that.

The Master: Overruled, yes or no.

A. I have seen a great deal of it done since then.

Mr. Jenks: Q. Can you say that you have seen enough of it done so that you can state in what manner they close those deals?

Mr. Robbins: Objected to. That is leading the witness.

The Master: He may answer that.

A. Well for many years after I was a member of the Board of Trade I was on the Board of Trade a great deal as a

839 visitor and I have seen the settling clerks settling it up just in the same manner.

Mr. Jenks: Q. That they did before?
A. That they did when I was a member of the Board.
Q. Down to how recently have you observed that?
A. Well I have not so much the last five or six years.
Q. You say you have or have not? A. No, I have not sir.
Q. For the past five or six years? A. No sir.
Q Now previous to that time when you did know about it, will you state how those deals were usually closed out?

Mr. Robbins: Objected to as calling for the opinion of the witness as to how they were usually closed out. Now if any man can go on the Board of Trade as a visitor and can tell how the majority or a great majority of those trades were closed out, why he has divine knowledge.
Mr. Jenks: On cross-examination you may ask him all about that. At present he says he knows and I want to know how they usually were closed out.

The Master: I understand the witness is answering that between '85—he was there from that time to '94, he was on the Board frequently and saw no different, is that your testimony?
A. That is what I say, yes sir.

Mr. Robbins: Settlements were not made on the floor.
The Master: Now you may answer.
Mr. Robbins: There is no evidence that a single settlement was made during the hours of the Board of Trade on the Exchange.

as
The Master: Answer to the period from '85 to '89.

Mr. Jenks: Q. Answer how? A. Made by settling clerks.
Q. Go on and state how they were settled.
840 A. By calling out that I have so much wheat sold and such and such a person has a hundred wheat bought of such and such a person and when they come to find out they have made a ring, they make it and the trade was cancelled. I have never made any trades myself but I have seen it done, time after time.
Q. How are these settlements as a rule made by the ringing traders?

Objected to by counsel for complainant, which objection was overruled by the Master.

A. By a ring of course.
Q. In payment of what?
A. When the ring was made it was reported into the office and statements were made out and payment was made in the usual manner.

Q. Payment of what?
A. Differences in the prices. I have answered that question a dozen times.

Mr. Robbins: Now that is confined to the period prior to '89.
The Master: Exactly.
The Witness: No sir, it is not. I have seen it since '89.
Mr. Robbins: I move to strike that answer out.
The Master: It may stand.
Mr. Robbins: That question was to the Master, not to the witness. The question was to the Master and the witness answered it.
The Master: Yes.

Mr. Jenks: Q. Governor Boyd can state why as a rule commodities dealt in on the Board of Trade for future delivery are not actually delivered?

Mr. Robbins: Objected to.
841 The Master: Objection sustained.

Mr. Jenks: Q. Governor do you know how long on the Board of Trade this year they have been dealing in December wheat, I mean wheat for this month?

Mr. Robbins: Now the witness says he has not been on the Board of Trade for a year and a half.

Mr. Jenks: Q. How long since you have been on the Board of Trade?
A. I beg your pardon sir, I said I had been on it this year. I was on it along in the spring some time.
Q. Where were you yesterday?
A. I was not on the Board of Trade.
Q. You were not?
A. No sir, I was not in the Exchange Hall, I was in the Board of Trade Building a good deal.
Q. Do you know what the December deliveries yesterday on the Board of Trade amounted to?
A. Only as published in the papers.
Q. What grade of wheat is dealt in on the Board of Trade in these contracts for future delivery?
A. Number two wheat.
Q. Do you know what grade of grain, wheat, is usually in store in Chicago in the elevators?

Mr. Robbins: Now I object to that.

The Master: Answer it by yes or no.
A. Yes.

Mr. Jenks: Q. What is it?

Mr. Robbins: I object to that. That is calling for the witness' statement without his knowing anything about it.

A. It varies at different times; sometimes there is a great deal of Number 2 wheat, sometimes very little.

Mr. Robbins: I move that that be stricken out.

842 The Master: I think he has shown his familiarity with grain. I think he says he is—

Mr. Jenks: Q. What grade of wheat is deliverable on future contracts made on the Board of Trade?

A. What is called Number 2.

Q. How much Number 2 wheat is there usually in this market compared with the whole amount that is in store?

Mr. Robbins: Objected to as calling for the opinion of the witness upon a matter which he has not qualified to speak upon.

Mr. Jenks: Q. Do you know? A. Only as published.

Q. Do you know as published?

A. Why it varies from day to day and from year to year. Sometimes there is a great deal of Number 2; other years there is very little.

Mr. Robbins: Wait a minute. I think before the witness answers that question we ought to have a ruling.

The Master: That may be stricken out.

Mr. Robbins: What is the ruling on the objection? What is the ruling on the question?

Mr. Jenks: He did strike it out.

The Master: The question is stricken out.

Mr. Jenks: Q. Governor, do you know where the products of the Northwest are usually delivered, I mean the grain and provisions in that portion of the country west of Chicago?

A. I know where wheat is delivered from the Dakotas and Minnesota mostly.

Q. Where is that delivered? A. Duluth and Minneapolis.

Q. Does that ordinarilly come to Chicago—as a rule?

A. Not as a rule.

Q. Does it ever come to Chicago unless the market is cornered? A. I don't know.

843 Q. Where are the provisions that are in the west, in the territory west of Chicago, actually delivered, do you know?

A. Do you mean from Kansas City, Omaha, St. Joe and such places?

Q. Yes.

A. Well delivered in various places, most of it south, some of it in Europe, some of it probably in Chicago.

Q. As a rule is that delivered in Chicago?
A. A part of it.
Q. The provisions?
A. A part of it is, the larger portion not.
Q. How is it as to other grain than wheat? A. Corn?
Q. Corn?
A. Very little of the corn comes to Chicago; mostly goes south to Baltimore and other places. It may come through Chicago. Statistics will show you how much they receive in Chicago. Small in comparison to the crop.

Cross-Examination

By Mr. Robbins:

Q. What is your business now?
A. Dealing in grain, provisions, stocks and bonds.
Q. What is the name of your concern?
A. James E. Boyd & Company and Boyd Commission Company both.
Q. You have two concerns? A. I do, yes sir.
Q You have advertised the Boyd Commission Company as successor to James E. Boyd & Company?
A. Yes sir, James E. Boyd's business is not closed up yet.
Q. Well, the active business is the business of the Boyd Commission Company is it? A. Yes sir.
Q. How long has the Boyd Commission Company been in existence? A. Nearly two years.
Q. And where is its business? A. St. Louis and Omaha.
Q. Where [—] you spend most of your time? A. Omaha.
Q. Omaha? A. Yes sir
844 Q. You manage that end of the business, do you?
A. No, sir, I have a manager.
Q. You are the head of the business?
A. I furnish the money.
Q. Are you the President of the Company? A. Yes sir.
Q. And give your time—give your attention to the active management of the business, do you? A. No sir, I do not.
Q. Are you also treasurer? A. Yes, sir, treasurer.
Q. And how much of the stock do you own of the Company, what percentage?
A. Well I might say I own it all, except a share or two that is in other names for the benefit of Directors.
Q. So you are the whole thing? A. I am the whole thing.
Q. Has this Boyd Commission Company filed with the Internal Revenue Collector at Omaha a notice under the act of Congress of March 2nd, 1901?

Mr. Jenks: I object to the question as not proper cross-examination.

Mr. Robbins: He has told his business. I understand I can cross-examine on his business.

A. Yes sir, I filed it under protest and with the distinct understanding that I did business similar to the Board of Trade.

Q. You filed it?

A. I filed it and that is written across the face of it, I used that language that I have used.

Q. Have you branches? A. Oh yes.

Q. Throughout the west? A. And south.

Q. And have you filled out for all your branches?

A. I may say I have no agent or no branches, they are correspondents.

Q. Have they filed—

845 A. I suppose they have sir. They are all obeying the law; I don't know as to that though.

Q. Do you deal in grain? A. Yes sir.

Q. What tax do you pay on your grain transactions?

Mr. Jenks: I object to that question. Is that cross-examination?

The Master: Tax?

Mr. Jenks: And as immaterial in this case.

Mr. Robbins: I want to know the character of his business. He says he is a dealer in grain. Now I may show what kind of a dealer in grain he is. The court will be desirous of knowing whether this important man who has come here with the title of Governor—what his business is now. Whether or not he is interested in having the defendant win in this case, because he is engaged in the same class of business. I have a right to know all about this man. That is the object of cross-examination. Of course I can see that it may go into details for some other purpose. [The Master.]

The Master: Well I won't let it extend very far. You may want to try Mr. Boyd on the same proposition.

Mr. Robbins: Why that is admitted. These facts are admitted. There is no attempt to.

The Master: He may answer that.

A. I pay tax in accordance with the provisions of that statute.

Mr. Robbins: Q. Two cents on each hundred dollars?

A. I said in accordance with that provision of the statute.

Q. Well state whether it is two cents on every one hundred dollars in value.

846 Mr. Jenks: I object to the question because it is not material in this case and it is not proper cross-examination and I will state for the benefit of the Master, if he does

not already know, that there is a great question as to whether there is any such law in force or not. There are many people in controversy with the government upon the statute.

Mr. Robbins: Most of the controversies are by people that don't pay the tax.

Mr. Jenks: And the members of the Board of Trade have as many controversies as anybody else.

The Master: I think that is immaterial Mr. Robbins.

Mr. Robbins: Save the point. I think I will take that to Judge Grosscup. I can show the character of the firms that come here. I had better stop and make that —

Mr. Jenks: Might as well get that thing through.

The Master: I guess you had better ask your questions so as to get the record, then we will go.

Mr. Robbins: Do you pay on your grain transactions, the tax of two cents for every hundred dollars of value in accordance with the provisions of the act of Congress passed March 2nd 1901, and providing for the imposition of internal revenue taxes amending the previous act covering that subject?

Mr. Jenks: Same objection as before and that is the same question we had before.

The Master: Objection sustained.

Mr. Robbins: Q. Why do you pay the tax?

Mr. Jenks: I object to that question.

A. What tax?

847 Mr. Robbins: Q. A tax of two cents.

A. I didn't say I paid a tax of two cents.

Mr. Jenks: Wait a minute I object to the question.

The Master: Objection sustained.

Mr. Robbins: Q. Are you conducting a bucket shop?

A. No sir.

Q. Why then do you pay this tax?

Mr. Jenks: I object to that question.

A. I have not stated I did.

Mr. Jenks: I object to that question, wait a minute.

The Master: Objection sustained.

Mr. Robbins: Has your concern a suit pending against it in the Federal Court at Omaha in which the Board of Trade has sued you and others to enjoin the receipt or use by your firm of the Chicago Board of Trade quotations and charging that you are a bucket shop?

A. I have received notice of some kind of a suit, I can't tell whether it is in the exact language that you quote or not.

Q. It is a suit that seeks to enjoin you from the use of the quotations, is it not?

A. Yes sir, that is all I know about it.

Q. It is a suit which charges you with being a bucket shop is it not? A. I don't know that.

Q. Is your lawyer in that case present at this hearing?

A. One of them.

Q. How long has he been in attendance on this hearing?

A. Sir?

Q. How long has he been in attendance on this hearing?

A. Well, I can't tell you that.

Q. How long have you seen him here?

A. I saw him yesterday.

Q. How long have you been here? A. Yesterday.

Q. Is he here by your instructions? A. No sir.

Q. Did he speak to you about coming here?

A. Yes sir.

848 Q. And attending here?

A. Well, no, I think that I was notified by other parties, not by my lawyer, asking me to come here.

Q. No, but is your lawyer here by your instruction?

A. This gentleman here, Mr. Harkless?

Q. Yes. A. No sir, he is not.

Q. Did he speak to you about coming here and being in attendance on this case?

A. Well I can't say as to that, I found him here.

Q. Are you to pay him for your attendance here?

A. No sir.

Q. You are not? A. No sir.

Q. Do you know of any other—do you know whether he is connected with this case or not?

Mr. Jenks: I object to that question as not cross-examination, and as entirely improper.

The Master: Objection overruled.

A. I should judge he was by being in attendance.

Mr. Robbins: Q. Have you joined this combination of bucket shop men that Mr. Christie spoke of as having been associated in New York? A. I have not.

Q. Have you received notice of it?

A. I have received letters from them.

Q. You have not answered them?

A. I have written letters in reply, I have not been asked to join, if that is what you want to know.

Q. What have you done in connection with that?

Mr. Jenks: I object to that as not cross-examination and as immaterial in this case.

The Master: Sustained.

849 Mr. Robbins: Q. You say you own a membership in the Chicago Board of Trade?

A. Yes sir, I have one in my possession that belongs [—] a man owes me money on it—I have it for security, it can't be used.

Q. That is what you meant by saying you had a membership isn't it? A. Yes sir.

Q. Didn't you say you had loaned it to him to be used?

A. I say he is using it, and paying—and owes on it.

Q. Under the rules of the Board of Trade who is the member under those circumstances?

Mr. Jenks: I object.

A. The man in whose name it is in.

The Master: Objection sustained.

Mr. Jenks: Produce your rules.

Mr. Robbins: I don't have to on cross-examination.

Mr. Jenks: You don't have to cross-examine on it.

Mr. Robbins: Let that be included, the witness having already testified that he is a member, and [owned] a membership at the present time, and having loaned it to others.

Mr. Jenks: That is objected to as not proper cross-examination and it calls for the opinion of the witness as to the rules of the complainant in this case and asks the witness to construe those rules.

Mr. Robbins: Q. Are you a member of the Board of Trade today? A. No sir.

Q. Are you correct in saying that you own a membership still in the Board of Trade?

A. I say I have a membership and another man is using it, that is enough.

Q. Whose membership is it? A. I will not tell you.

Q. How? A. I don't need to answer that question.

850 Q. I mean is it your membership or the other man's?

A. You have heard what I said and you can decide that question for yourself.

Q. I have asked you to state? A. It is in his name.

Q. Whose membership is it, yours or his?

A. I have the membership in my possession, the certificate.

Q. Who goes on the Board of Trade under that membership, you or he?

Mr. Jenks: I object to that question as not cross-examination and as immaterial in this case.

The Master: He may answer that question.

A. He goes on the Board I suppose.

Mr. Robbins: Q. By reason of your possession of the certificate of membership can you go on the Board of Trade?

A. No sir.

Mr. Jenks: I object to that question as not proper cross-examination and as construing rules of the Board of Trade.

The Master: He has answered no sir, I will let it stand.

Mr. Jenks: Well, he had better not answer quite so quick.

Mr. Robbins: It is very easy for you to get the statement that he is still a member and then when I try to cross-examine on it you are very anxious to hold it out, and prevent the straightening out of the thing.

Mr. Jenks: Oh you have got us frightened now.

Mr. Robbins: Q. Now what is the name of the person?

The Witness: I decline to answer.

Q. Let me get my question in. In whose name is this membership? A. I decline to answer.

Mr. Jenks: What is that question. Wait a minute.

(Question read.)

851 Mr. Jenks: I object to that question as not proper cross-examination and I will state as a further reason for objection that the Board of Trade wants to find out who the person is so that they can discipline that person under the rules of the Board of Trade. It is a fishing matter that ought not be inquired into in this case; it has nothing to do with this case.

The Master: The Governor refuses to answer, the Master will not require him to answer.

Mr. Robbins: When did you say you were on the floor of the Exchange last?

A. The early part of this year I was on the floor, for half a day, part of the day.

Q. Is that the time that you were requested to leave the floor of the Exchange?

A. I never was requested to leave the floor of the Exchange; any man that says so lies.

Q. Through whom did you gain admission at that time?

Mr. Jenks: I object to that question as absolutely immaterial and not cross-examination. Wait a minute, Governor, until the Master rules on it.

Mr. Robbins: Now he says he was on the floor of the Exchange and I am cross-examining on it.

The Master: The objection is overruled; he may tell how and when he was up there.

A. I am not positive whether it was John G. Bearsly or another member, it was one [of] the other, I think it might have been A. W. Wright.

Mr. Robbins: Q. Was it Mr. Green of Irwin, Green & Company? A. I think it was once, yes sir

Q. Did not Mr. Green come to you and tell you to give up that ticket that the Board of Trade required it surrendered?

A. No sir.

852 Mr. Jenks: I object to that question.

Mr. Robbins: Q. What? A. No sir.

Mr. Jenks: I object as not cross-examination and as immaterial here

Mr. Robbins: Q. Didn't that employee of the Board come to you and make that request? A. No sir.

Mr. Jenks: I object to that question.
Mr. Robbins: What?
The Master: He has answered.
Mr. Jenks: For the same reasons.

Mr. Robbins: Do you say no sir, do you say that at no time a member of the Board of Trade came to you and asked you to surrender your visitors ticket on the Exchange?

Mr. Jenks: Same objection to that question.

A. I say that sir, that I never was asked to surrender a ticket nor never was asked to go off the floor. I swear to that positively.

Mr. Robbins: Q. Have you made any application for a visitor's ticket to the Board of Trade since that time?

Mr. Jenks: I object to that question as not cross-examination and not competent here.
The Master: Overruled.
Mr. Robbins: Sir?
The Master: He may answer.

A. No sir, I have not.

Mr. Robbins: Q. And how long before were you on the Board, before that?

A. Oh I have forgotten, can't remember; many times, been invited very frequently.

853 Q. Answer the question please? A. I have forgotten.

Mr. Robbins: I move to strike out the answer as not responsive.
Mr. Jenks: I object to its being stricken out.
The Master: It may stand.

Mr. Robbins: Don't you know that persons in your class of business are not allowed to receive tickets, visitors tickets on the floor of the Exchange?

A. Do you know what class of business I am in?
Q. Answer the question. A. No sir, I do not know it.
Q. You have a branch, do you not, in St. Louis?
A. A main office, one of our main offices.
Q. Has that branch of yours qualified under the act of March 2nd, 1901, in the Internal Revenue office of St. Louis?

Mr. Jenks: I object to that question as not cross-examination and as immaterial here.
The Master: Objection overruled.

A. I think it has.
Mr. Robbins: Q. Does that office pay the two cent a hundred dollar tax on its grain transactions?

Mr. Jenks: I object to that question the same as before.
The Master: Sustained.

Mr. Robbins: Q. Are you the Boyd that is one of the parties in the suit of Hansen vs. Boyd, reported in the 161 United States, 397? (Handing a book to witness.)
A. Yes sir, I think I am the man.
Q. This case refers to "evidence of the rules of the Board of Trade at Chicago and rules of the Clearing House of that Board and the admission of certain testimony given by James E. Boyd, one of the parties, explanatory of the Clearing House rules, and of the manner in which the payment of losses and profits accruing in the various transactions involved in this action were made by the Clearing House of the Chicago Board of Trade". Is that you?

Mr. Jenks: Wait a minute.

854 Mr. Robbins: Are you the person referred to there?

Mr. Jenks: I object to that question as not cross-examination and not competent in this case.
The Master: He may show the witness' connection with this case if he desires.
Mr. Jenks: What is that?
The Master: He may show the witness' connection with this particular case.
Mr. Jenks: Why I don't understand that he has the right to introduce that case in evidence here.
The Master: No, no, no. I won't permit that. The Court will take judicial notice of the case.
Mr. Jenks: Well he admits that he is the party in that case. Now that is as far, I insist, as the gentleman has a right to go on cross-examination. He can't go over that again, he can't ask this witness any questions about that case, whether it was decided rightfully or wrongfully; we have no right to in-

quire whether what the court says there appeared in that case, whether it was true or false, we have no right to inquire. I insist that he has no right here on cross-examination to ask any questions about that case beyond the question whether this man was a party.

Mr. Robbins: The question is, whether he is the James E. Boyd referred to in that case.

The Master: He may answer that question.

A. I suppose I am; I have not read it over at all.

Mr. Robbins: Q. In that case did you testify to the rules of the Board of Trade as mentioned in that clause?

855 Mr. Jenks: I object to that qestion for the same reason.

A. I have forgotten that is a good many years ago.

Mr. Jenks: Wait a minute. What does the Master say?

The Master: Why that objection may be overruled.

A. It is a great many years ago I say, and I have forgotten all I testified to.

Mr. Robbins: Q. If in that case you did testify as to the rules of the Board of Trade, the rules of the Clearing House, and explanatory of certain Clearing House rules and the manner in which payments accruing under the various transactions were made through the clearing house, were those rules and that method of payment the same as the method of payment to which you have referred in your evidence here?

Mr. Jenks: I object to that question as not proper cross-examination and as starting off with the word "if" when the witness has stated that he does not remember what he did testify to.

The Master: Overruled. The question is whether they were the same.

A. I don't know; I suppose that I testified according to the rules at that time. I don't know what I testified to. It is 12 or 14 years ago since I testified, anyway.

Mr. Robbins: Q. When was this, when did these transactions occur that were the substance of this suit?

Mr. Jenks: I object to that for the same reason.

A. I have forgotten the date.

Mr. Robbins: Look at the opinion, see if that refreshes your recollection.

Mr. Jenks: He need not to look at the opinion until the Master decides this objection.

856 The Master: Objection overruled. He may look at it and tell if that refreshes his recollection as to when those transactions occurred.

A. It looks to me like it was in 1888, I judge.

Mr. Jenks: What was?

A. The transactions.

Mr. Jenks: Let me see that. Wait a minute. Let me see that.

The Witness: I will let you see it in just half a minute, if you will allow me to look at it.

Mr. Jenks: Yes.

The Witness: I will correct that by saying that it says here, that it was April 29th, 1889. Of course I could not remember when it was nor anything about it.

Mr. Robbins: Q. Now how long after that was it that you ceased to do business? A. Very soon after that I quit business.

Q. Very soon after that? A. Yes sir.

Q. Now the system of closing up offsets that prevailed at that time, is that the same system of offsets that you have been—or ringing that you have been testifying to here?

A. At that time yes, I suppose so. I testify now from memory.

Q. Have you testified to more than one system of settlement or ringing? A. What is that, sir?

Q. Have you testified here today to any more than one method of settlement of rings or offsets?

A. Well I have only testified to one method, but I may not have described it entirely proper because I do it from memory.

Q. Now is the method you testified to today the same method that prevailed at the time you had those trans-
857 actions? A. Substantially so.

Q. The clearing house system that you have referred to in your evidence today, is that the same as the clearing house system that existed at the time you testified in that case?

A. I don't know sir. it might be there are some changes today, I could not say.

Q. Well, wherein does it differ? A. I could not tell you.

Q. You have been testifying to the clearing house?

A. Yes sir.

Q. Do you know of any difference between the clearing house you have been testifying to to-day and the clearing house that you testified to in that case?

Mr. Jenks: I don't know that he testified to anything in the clearing house today.

Mr. Robbins: He testified to settlement.

The Master: Do you know of any difference?
A. No, I can't recall any. I could not tell from memory.

Mr. Robbins: You say you have not had any transactions on the Chicago Board of Trade for the last year and a half, is that right?
A. I might have had some since the year and a half, not many.
Q. Didn't you testify on direct examination that you had no transactions on the Chicago Board of Trade in the last year and a half?
A. I have had no transactions lately and it might be a year and a half, I can't tell the exact date.
Q. Well now, why haven't you had any transactions?

Mr. Jenks: Now I object to that question.

A. Didn't want to make them.
Mr. Robbins: Q. Did the fact that the Chicago Board of Trade prohibit- its members from making transactions with persons of your class in business, have anything to do with your not making any transactions? A. I don't know sir.
858 Q. What?
A. I don't know anything about what the Board of Trade does now.
Q. Do you know and have you not for the last year and a half known that the Chicago Board of Trade did not permit its members to take trades from persons engaged in your class of business?
A. Well my dear sir, I was solicited for trade yesterday by members of the Board.
Q. Who? A. I will not tell you.

Mr. Robbins: I would like to have an answer to the question now.
Mr. Jenks: I object to the question.
The Master: The witness' refusal to answer is sustained.
Mr. Robbins: He did not refuse to answer, he simply omitted to answer.

(Question read as follows: "Do you know and have you not for the last year and a half known that the Chicago Board of Trade did not permit its members to take trades from persons engaged in your class of business")

The Master: I doubt if that is quite responsive. You may answer that more fully.
A. I will say that I know nothing about what the Board of Trade's rules or resolutions or anything else—I will say how-

ever, that no Board of Trade member ever refused to take my business.

Mr. Robbins: Q. You have testified as to the closing out of trades as between members and their customers and stated that in such cases no delivery was necessary? Isn't it true that trades may be settled as between the customer and the broker and still remain open trades on the floor of the Exchange, between the members?

A. I don't see how that trade could remain open if it was settled with the customer.

859 Q. You think if the customer sells—buys and then sells on the open exchange through a member, that if the broker pays the customer the difference between the selling price and the buying price, less the commission that that necessarily closes the transaction which the broker has made upon the floor of the exchange with the other member do you?

A. It closes it so far as the customer is concerned; with the members of the Board of Trade it may remain open indefinitely.

Q. Well now the fact that it had been settled as between the member and the customer does not necessarily prove that there would not be deliveries on the trade between the members does it? A. I think not.

Q. You have known of trades that were closed as between the customer and the member and remain open upon the floor of the exchange to be completed by deliveries, have you not?

A. I presume I have, but on the other hand I have known trades that were closed, long before they were closed with the customer on the Board.

Mr. Robbins: Never mind. I move that that be stricken out as not responsive.

The Master: Stricken out.

Mr. Robbins: Q. I understand you to say that 99 per cent of your customers told you that they did not intend to deliver.

A. What is that question?

(Question read.)

Q. At the times they made trades through you.

A. No sir, not at the time that they made trades they did not tell me. I testified that 99 per cent—that they

860 never—the wheat never was delivered, that is what I testified to.

Q. But at the time the trades were opened, nothing was said about delivery between you?

A. There might be and there might not, as the case might be.

Q. Well as a general rule, how was that?

A. Well as a general rule nothing was said.

Q. When your customers gave you orders to buy and sell and they were sent up to the floor to be executed by your brokers, would they be executed in the same way, whether the party intended to deliver or not?

A. Yes sir, the broker knew nothing about it.

Q. If a man came into your office and said, "I have 5,000 bushels of wheat to deliver" and wants to sell it for December, would it be executed in the same way as it would if another man came in and said, "I want to speculate and don't want to deliver 5,000 bushels of wheat, sell it for December delivery". So far as making of the trades on the floor of the Exchange is concerned, would it be done in the same way?

A. Nothing would be known at all by the broker, what the trade was made for. He was told to execute the order, either to buy or sell and he did his duty and reported it to the office.

Q. Can you tell, standing by one of the pits and seeing these orders executed, can you tell from the way in which they are made between the members, whether members or their customers behind them, really have the property on hand or not, at the time the transaction is made?

A. No sir, I can only tell by what they do afterwards.

Mr. Robbins: I move to strike that out, "Only tell by what they do afterwards".

The Master: The answer "No sir" may stand; the rest may go out.

861 Mr. Robbins: Q. Now can you—can anybody tell seeing these trades made in these pits, by way of hedge, whether they are hedging trades or whether they are speculative trades by the manner they are made there, by anything that occurs there?

A. I can't tell what anybody could do. I could tell what I knew. You asked me if I could tell what anybody would know; I can't tell anything about what anybody would do.

Q. Can anybody not a party to these trades, tell by standing there? A. I think not.

Q. Are not all trades for future delivery, made the same way whether they are to be followed by actual delivery, whether whether they are made by way of hedge they are made by way of hedge; and followed by actual delivery on the future contract of sale, and whether they are made in the manner that your customers did for purely speculative purposes.

A. Trades are made in various ways; trades are made in the pit by open bidding, some trades are made in the office.

Mr. Robbins: Read the question to him. Confine your answer to trades made in the pit.

(Question read.)

The Master: Confine your answer to what occurred in the pit.

A. In the pit, yes.

Mr. Robbins: Q. These quotations that are sent out and have been sent out by the Board of Trade known as the continuous quotations, they mark every change in the business in the pit do they not?

A. That is the understanding; they miss them sometimes.

Q. Well—

A. I have known instances where they were not sent out at the same time; then I would go out and see wheat sold or grain sold at so and so, some time afterwards.

862 Q. What way can you suggest or what way is there by which the Board of Trade could separate the quotations which register the transactions in which deliveries are to be made, and are made, from transactions in which deliveries are not contemplated by the parties?

A. You ask me what way they could tell?

Q. Read the question. Pay attention to the question.

(Question read.)

A. Well sir, I am not here to suggest and I can't suggest.

Mr. Jenks: I will object to that question for the reason that it assumes that in deals that are made there it is understood that any deliveries shall be made at all.

Mr. Robbins: He testified to the way that quotations were made.

The Master: Read the question to me. I did not quite understand it. (Question read.)

Mr. Robbins: I move to strike out the word suggest in that question and say, is there any way.

Mr. Jenks: Put the question then.

Mr. Robbins: I won't put another question.

The Master: Well, if that is the question, answer is there any method that you know of?

A. How should I know?

Q. Is there any that you know of, any method that you know of?

A. How should I know? I don't know anything about what the Board of Trade does. That would not be in the methods.

Mr. Robbins: Weren't you on the Board of Trade off and on? A. Yes sir.

Q. Connected with the Board? A. Yes sir.

Q. Haven't you testified as to these quotations?

863 A. I testified as to how they were covered; I am not here to suggest or to tell the Board of Trade what they can do, I believe.

Q. I want to know how, in the way that you have testified, these quotations are gathered, the Board of Trade can separate the quotations upon which deliveries are intended to be made, quotations of transactions, of contracts understand, upon which deliveries are intended to be made and are made, from transactions of the character—of the speculative character indulged in by your customers?

Mr. Jenks: I object to the question for the reason that it assumes that there are transactions there where deliveries are contemplated, while the evidence here shows that the transactions are such that no deliveries are contemplated on any of the deals there.

The Master: I think the witness has given one-half of one per cent as the measure of those that are contemplated. He may answer the question if he can.

A. No sir, I did not give it as one-half of one per cent as deliveries that was contemplated. I stated that was the proportion, possibly, of the business that I did on the Board of Trade.

Mr. Harkless: In reference to the pit business, he says there was no delivery in the pit.

Mr. Robbins: He has not stated anything of the kind.

A. That is another question. I hardly know how to answer it. If you will read it again—I haven't got it.

Mr. Robbins: Read it. I would like to have an answer.

A. I presume the Board of Trade knows more about that than I would.

(Question read.)

864 A. He wants me to tell him how it might be done?

Q. Yes.

A. Well sir, I could not tell him how it might be done except that I would make every member of the Board tell us the cash sale and the option sale, if he would sell it for cash then I know they could separate the quotations, or separate what amount was to be delivered and what was not. I don't see any other way; the members there may know other ways but I don't.

Q. Then you think there would be no way except by requiring the brokers, when they are making trades in the pit, to specify whether they intended to deliver or not, so that the person gathering the quotations would hear that specification?

A. The Board of Trade might compel them to do that, yes. I don't know what the Board of Trade can do, I can't tell you.

Q. But let's have the question? A. I can't tell you.

Q. If you want to get away, I would advise you to answer the question without dodging it.

A. I have answered it. I said I can't tell the Board of Trade how they can separate the quotations.

The Master: As far as you know, you don't know of any way, is that your answer? A. Yes sir.

Mr. Robbins: Is this delivery notice that you have testified to, covered—was it covered by the rules and regulations of the Board of Trade at the time you were doing business there?

A. We did business according to the rules and regulations of the Board of Trade undoubtedly.

Q. Let's have the question answered.

The Master: Read the question.

Mr. Robbins: I don't know whether this man can
865 understand the question; he won't answer, it is always something else but an answer to the question.

A. This delivery notice, it may be changed since the one they made, I don't know.

The Master: Was it then? A. It was then.

Mr. Robbins: Q. It is the same system of delivery by notice that was then covered by the rules of the Board of Trade, was it? A. Most assuredly.

Q. You say these quotations were gathered by the Western Union for a number of years. Don't you know as a matter of fact, as a member of the Board of Trade, that between 1883 and 1888 or 9, the Western Union did not gather these quotations and did not distribute them—leave that out—"did not gather these quotations"?

A. Well the operators of the Western Union were on the Board at that time, that is my recollection, and the quotations were given to them by these men—

Q. Were not quotations gathered by the Board of Trade at that time, under rules issued for that purpose?

A. Well from memory, I can't recollect. I know how they were done, but who paid for it, of course I have forgotten.

Q. And during that period the quotations were only sent to approved correspondents, were they?

A. That I don't know sir; I think everybody had them, I am sure they had, about that time.

Q. Don't you remember that the Board of Trade during those years refused to give quotations to everybody?

A. What year do you mean now?

Q. In 1883 and up to the decision of the Supreme Court in 1888 or 9.

Mr. Jenks: Now let's see. I object to that question.
866 The Master: He may answer if he knows.
Mr. Jenks: It assumes something that is not true.

A. Well, I don't remember the exact date and I don't know whether they did or not. That was part of the business that I did not care about.

Mr. Robbins: Q. Then you don't know, as a matter of fact whether the quotations were gathered by the Western Union for many years do you?

A. I don't know but I know they were distributed all over the country.

Q. Well you don't know that they distributed indiscriminately for a great many years, do you?

A. Well, that is my recollection that they were. I could see them almost anywhere.

Q. During that time that I speak of were they distributed indiscriminately?

A. They may have been a cessation for a short time but I have forgotten it.

Q. From early in '90 to 1892, don't you know that the Board of Trade quotations were not gathered by even the Board of Trade or any Company?

A. No sir, from '90 to '92 I paid no attention to the Board of Trade, knew nothing about it at all.

Q. Then during those years you don't know whether the quotations were distributed indiscriminately at all, do you not?

A. No sir, only as I could see them in various places through the country where I went.

Q. Did you see any quotations of the Chicago Board of Trade during the years from about May of '90 to May of '92?

A. I don't know; I have forgotten the exact date. I saw them most everywhere, most all the time.

Q. Did you during those years?

A. I say I have forgotten.

Q. I wish you would explain to me how you know
867 that people throughout the west, who own corn in the crib and sell it by way of hedge in the Chicago market, do not deliver it in Chicago but deliver it elsewhere.

A. Well sir, they sell principally either the corn in Chicago—

Q. Well now—

Mr. Harkless: He is going to tell you why.
The Master: Go ahead.

A. They sell No. 2 corn in Chicago and that corn will not grade Number 2, it might grade Number 3 or even worse than that.

Mr. Robbins: Q. Is that always true?

The Master: Have you finished?

Mr. Jenks: Wait until he finishes the whole business.

The Master: Go ahead.

Mr. Jenks: How do you know?

The Master: Give your reason.

A. Well, I say that they sell corn, Number 2 corn on the Board of Trade in Chicago. Their corn may not grade Number 2 if they send it here in carload lots to be sold by sample; they may not get the price; they can send it to other markets and get a larger price than by shipping it to the City of Chicago. That is why they do not send it here, because they want grade Number 2.

Mr. Robbins: Q. That is the corn raised in the west does not grade Number 2?

A. Not all of it, no, but a very small proportion of it, sometimes; this year I don't think any of it will grade Number 2.

Q. What percentage of corn raised in the west grades Number 2 if you know?

A. I will say that is different, in different years. This year there will be none hardly.

Q. What can you say, what grades Number 2, what are the sources of your opinion?

868 A. Why the number of cars that are shipped into Chicago and the number of cars on the Board that are rejected.

Q. Do you know for any year during this time how much Number 2 corn has been received and placed in storage in Chicago?

A. No sir, I am not an encyclopaedia of information on that subject because I don't keep track of it.

Q. Do you know whether any has been? A. Any what?

Q. Corn, Number 2? A. Shipped into Chicago?

Q. Yes? A. When?

Q. During any of the years you have been testifying about?

A. Oh yes, plenty of it.

Q. Do you know how much?

A. No sir, I could not tell you the proportion.

Q. Large quantities of it? A. Sir?

Q. Large qantities of it?

A. Some years large quantities; some years smaller quantities.

Q. Now how do you know that none of that corn was covered by these hedging sales that you speak of?

A. I don't say that none of it was part of it.

Q. Do you know how much of it was covered by these hedging deals? A. I don't know how much.

Q. How do you know how much of it that is covered by these hedging deals is delivered on these hedging deals?

A. I know the customs is all.

Q. How do you know the customs?

A. Well, I know for instance, that a man that owns corn in Nebraska, who has sold say, on the Board of Trade in the City of Chicago and don't ship a bushel of it to Chicago, that is personal knowledge.

Q. Well is that all the knowledge you have of whether the corn is shipped to Chicago and sold by way of hedge and delivered or not?

869 A. Oh I have explained the knowledge, it is the same knowledge that any other man would have, general knowledge.

Q. Well, how do you know? Give us the source of your information upon it?

A. By knowing who has corn cribbed; by knowing the dealers by having them tell me where they ship the corn and what they had.

Q. Well how many people have you known of that have corn cribbed and shipped it to Chicago?

A. And shipped it to Chicago?

[A.] Yes?

A. They might have shipped a portion of it to Chicago but I know a great many people that crib corn.

Q. Is that the only basis of your knowledge as to whether this corn that is sold by way of hedge, is delivered or not in Chicago?

A. The only source of my knowledge, generally, no sir.

Q. Yes, read it please?

A. Well I know some from personal knowledge and some from general information.

Q. Now is there any way of telling how much of Number 2 corn that is shipped to Chicago is sold by way of hedge and how much is not? A. Not any way for me to tell.

Q. Is there any way for anybody to tell?

A. The man that does the shipping and selling can tell.

Q. As to his particular corn. But is there any way by which anybody can know how much of the total aggregate of Number 2 corn, shipped to Chicago is sold by way of hedge?

A. There is no way in the world that one man can know all other mens business.

Q. Now is there any way by which you or anybody else can know how much of the Number 2 corn shipped to Chicago and sold by way of hedge, was actually delivered on those hedging contracts?

A. I have stated that the man who did the business knew.

Mr. Robbins: Read the question, read the question.

870 The Master: Is there any way that any one person can know it?

A. Not all of it, no sir. As I stated, no one man can know all other men's business.

Mr. Robbins: Q. Are you in a position to know the extent of this hedging business on the Chicago Board of Trade in Chicago?

A. I was in a position to know what I did myself, when I was on the Board.

(Question read.)

A. I don't know other men's business.

Q. Oh answer the question yes or no, don't be arguing?

A. Well no, then.

Q. Now is there any way of knowing how much in volume of these hedging trades is completed by the actual delivery of property hedged against and how much of those transactions is closed by buying in? A. I don't know.

Q. You don't know of any way? A. I don't know.

Q. You stated you knew how other members of the Board of Trade did business and that they did business in the same way. Now how many members of the Board of Trade were you familiar with, their business?

A. Those with whom I did business.

Q. The [the] only people whose business methods you knew of were those with whom you did business?

A. I might have known of others but I knew it of them positively, how they did it.

Q. So your answer as to the methods of business and the business of other members was confined to those with
871 whom you did business was it?

A. No sir, not entirely so; every member did business in accordance with the rules of the Board of Trade, was supposed to; those rules applied to every one alike.

Mr. Robbins: Read that question over.

A. I have answered that question.

Q. Then you assume that other members did business in that way because of your knowledge of the rules of the Board of Trade?

A. I assume, and from personal knowledge also, both.

Q. I am trying to get at the extent of your personal knowledge as to the business of others.

A. Well I am giving my own knowledge of business with most of the active members of the Board of Trade, most of the active members of the Board of Trade.

Q. This was prior to 1888 was it?

A. Well not prior to because I did business in 1888 and 1889.

Q. Prior to 1889?

A. Well it was in 1889 and 1888 and '87.

Q. Now what way have you of knowing the way other members of the Board of Trade did business in 1889?

A. Only by doing business with them as a customer.

Q. Then your business after 1889 is confined to your knowledge of the business of those with whom you did business yourself? A. After '89.

Q. And how many of them were there?

A. Several, I could not tell how many.

Q. What?

A. I could not exactly tell you how many. I did business with Ware & Company, I could name half a dozen probably.

Q. Well half a dozen. Well now as to those men where were you when you were doing business with them?

872 A. I have been here and I have been in Omaha.

Q. Did you go into their office and see the way they settled their trades any day?

A. I have been in their offices.

Q. Were you ever present when the settlements were made?

A. I have seen the settling clerks the same as usual in the lobby.

Q. Have you seen any one since 1889, the settling clerks of any one firm during the one day, during that day?

A. I only knew just from the general appearance what was going on. I knew nothing about it, it was not my business.

Q. Well from general appearances of what was going on how can you tell how many trades of any firm with which you were doing business since 1889, was settled by the system of rings—by the system of ringing? A. I could not tell.

Q. How can you tell what proportion of the trades with any firm with which you were doing business were closed by delivery on any day, any given day?

A. I know of no way unless I asked the firm and they told me.

Q. Since 1889 have you acted as a broker or made any sales in any of the pits on the exchange?

A. I have not been a member.

Q. Have you ever stood by any of the pits during a day continuously during the market hours of any day since 1889?

A. Yes sir.

Q. How? A. Yes sir.

Q. From 9:30?

A. Well, I would not say from 9:30 until 1.15, but I think I have many a day.

Q. What? A. Many a day been on the Board all day.

Q. Near one of the pits?

A. Yes sir, on the edge of it. I will say this for you, that I have never made a trade in the pit in my life.

873 Q. How can you tell standing on the pit, near the pit what proportion of the trades made in the pit for that day were settled by the ringing system and what proportion were settled by deliveries?

A. No man could tell that.

Q. No man could tell that? A. No sir.

Q. Your only comparison that you make is really confined to your own business is it not?

A. Yes sir, I stated it was my own business. I don't think I have delivered one-half of one per cent but I put it one so as to [—] safe.

Q. You don't undertake to give the percentages of—as applied to the whole business on the Board of Trade do you?

A. Not that per cent, no sir.

Q. You don't pretend to know enough of the volume of the whole business or the volume of such of it as is closed by deliveries and such as is not closed by deliveries, to give any percentage as applied to the whole business of all the members of the Board of Trade do you?

A. No sir, not of the business, there are a great many members of the Board of Trade that don't belong to the clearing house, but you know enough, receive and deliver enough.

Q. Did you, while you were in the business, did you have to do with the settling of your trade, or was that entrusted to some settling clerks or other man?

A. I certainly did not do the business.

Q. Well it probably was—came to your firm by delivery upon one contract and was then delivered out upon another contract you had with some other member, would you have to do with that? A. No sir.

Q. Or would it be left to—

A. Why the clerks. I have seen it done, clerks and bookkeepers. The main object is to not receive or deliver wheat —when I was on the Board of Trade.

Mr. Robbins: I move to strike that out.

874 The Witness: Well that was my main object.

Mr. Robbins: Unless you consent to strike that out we will have to stop.

Mr. Harkless: He has a right to state his object.

Mr. Robbins: He has ruled so often that you had better let it go out.

Mr. Shea: Well, go on to something else until the Master comes.

Mr. Jenks: What do you want?

Mr. Robbins: His answer is not responsive.

Mr. Jenks: It is there, you get at it in any way you know how that is all I can say on the subject.

The parties here adjourned at 1:05 o'clock P. M. to meet at 2 o'clock P. M. of the same day, December 3rd, 1901.

875 Two o'clock, December 3rd, 1901, parties met pursuant to adjournment.

James E. Boyd, a witness on behalf of the defendant, resumed the stand for further cross-examination by Mr. Robbins, and testified as follows:

(And thereupon the last two questions and answers were read to the Master.)

The Master: Well, that is irresponsive to the question.

Mr. Robbins: The last part of it goes out then?

The Master: Yes.

Mr. Robbins: Well during the time that you were in business did you have anything to do with the detail of making these settlements by your firm?

A. I didn't do any clerical work whatever.

Q. You would then know of cases where wheat came in and was delivered out the same day? A. Yes sir, I would.

Q. You would know that, would you? A. Yes sir.

Q. You would know that when you were here?

A. Yes sir.

Q. I understood you were here a week of every month?

A. Oh, perhaps more and perhaps less.

Q. Then you would know of it when you were here?

A. My brother was manager I was not here only about—

Q. Would you know of it when you were not here?

A. Yes sir.

Q. You would know of that? A. Yes sir.

Q. How would you know of that?

A. By hearing it, hearing of it.

Q. What will happen in case one of your customers had wheat bought and another customer had sold, and your firm had made contracts on the Board of Trade and both contracts

remained open until the time of delivery day arrived and your firm received the grain upon one of the contracts and delivered it out upon another, what would happen in your office?

A. We would not receive the grain, we would receive
876 notice that it was ready for delivery that they held it ready for delivery.

Q. What would happen where you received notice and it was passed along, the notice?

A. We would immediately pass it along to the parties to it whom we had sold.

Q. What else would happen?

A. Well, I could not tell you the whole modus operandi.

Q. You would not know them whether you would get the wheat or not?

A. The custom, yes, I knew what the custom was at that time.

Q. In the case I have supposed, would you know what had taken place whether you were here or not?

A. I did know, not when I was here, I would not know all not
our particular acts, I would know how much, was delivered to me by having them inform me.

Q. Then all your knowledge of the amount of your deliveries during the time you were not here, would be based upon what somebody else informed you?

A. My knowledge would be just the same as any other commission man's, his clerk did the business and he knew that it was done.

Mr. Robbins: I move to strike that out.

The Witness: Well, that would be my knowledge.

Mr. Jenks: I object to striking that out.

The Master: I don't think that is responsive to that particular question. Just read that. (Question read.)

A. Not altogether.

Mr. Robbins: From what other source?

A. I might be away from here and they would tell me when I came here.

Q. Well, in any other way? A. I don't know.

Q. Then in the case of transactions of that character, occurring while you were here, the only way you would know about it would be by somebody telling you?

A. By being informed by my brother who was the
877 manager of the general business.

Q. And in no other way?

A. I won't say in no other way.

Q. Well, what would you say? Would you know about it?

A. I don't know. I can't tell you.

Q. Well, what happened in such transactions beyond the receipt of the notice or a warehouse receipt and its immediate delivery out?

A. Everything that was customary would happen. I can't tell you the exact modus operandi, because as I say, the clerks and bookkeepers did it. I did not do it. I knew it was done.

Q. What else would happen in the case supposed?

A. I don't know.

Q. In your office? A. I don't know.

Q. When you spoke of [their] being deliveries in your business would you class that transaction like this among the deliveries or among the settlements?

A. What is that, sir? (Question read.)

A. Like what? I don't understand the question.

Mr. Robbins: Read back.

The Master: Where the notice and delivery was passed to you?

A. Why I would immediately pass it to someone else that I had the grain sold to.

Q. Now how would you class the particular transaction?

A. In the settling class.

Mr. Robbins: Would you call that a settling transaction?

A. In the settling class.

Q. Would you class that among the trades that you say are settled? A. It was settled as far as I was concerned.

Q. Well, that class of transactions then would be in the 99 per cent that you refer to in your business?

A. That I did not receive.

Q. Yes?

A. Yes sir,—no, that class would not be. That would be wheat received. I beg your pardon, I did not understand the question; that is classed in the one per cent or less that I did receive. That was the notice of delivery. I understand it now; I misunderstood your question; I was thinking of ringing
878 up trades.

Q. But in the case supposed, what permanent record would be kept in your office of that transaction where you did not finally take in and pay for the property, but the notice was passed into your office and passed out again the same day?

A. Just what was the custom in the other offices and the custom of the Board of Trade. I can't describe it to you, it was done by the clerks. I did not do it.

Q. Did you have anything to do with closing these trades by rings yourself while you were in business?

A. No sir, I never did any work at all.

Q. Well now how would it come to your knowledge that any person had refused to join in a ring?

A. By being informed of it.

Q. Yes?

A. By my settling clerk or bookkeeper or some one in the office.

Q. When you were away—

A. It was very seldom done, as I remember.

Q. When you were [—] you have that information as well as when you were here? A. No sir.

Q. In case one refused to join in a ring, the trade would have to be closed under the Board of Trade rules, by the delivery, would it not?

A. If I purchased wheat for a man and he refused to deliver it to me, is that what you mean? A

Q. Yes? A. I don't understand that.

Q. In any of these trades made on the floor, that are of the character that enters into this settlement of rings, suppose that a man refused to join in a ring when he has both bought and sold? How would the trade be settled?

A. It would have to remain open, I suppose until the option—until the day of the option required it to be settled, then if he did not deliver the wheat I could buy it in the open market and charge him up with the difference.

Q. And how were such trades settled, by the delivery 879 or by defaulting?

A. By defaulting and the purchase and paying the difference, that is my recollection of it.

Q. I understood you to say that there was such a grade of wheat on the Board of Trade as number 2. Is that right?

A. There is such a grade, I believe.

Q. How long has that grade been in existence?

A. Well, I could not tell you sir; I am paying no attention to the Board of Trade business at all. There has always been a certain grade, whether it is No. 2,—it is not as [—] used to be, I know that. I know it is changed from what it formerly was, No. 2 spring, but I could not describe to you how.

Q. Are you testifying here under the expectation that this evidence being taken here will be used in your case at Omaha?

A. I don't care whether it is or not.

Q. Answer the question?

A. I am not testifying under any expectations.

Q. Have you been informed by your counsel that he is going to try to have this evidence used in your Omaha suit?

A. I have been informed that it might be used in Omaha, he could not tell.

Mr. Harkless: It will be if you consent to it.

(Question read.)

A. Not all of it, no sir.
Mr. Robbins: What?
A. Not all of it. I think he told me that he might try to have a portion of it used.
Q. What portion? A. I can't tell you.
Q. Did he tell you that he was going to try to have your evidence used?
A. No sir, I can give my evidence there?

Mr. Robbins: Mr. Jenks, did you introduce delivery notices as exhibits?
Mr. Jenks: No, that is the one that you objected to.
Mr. Robbins: I guess that is all.

William E. McHenry, a witness heretofore called, sworn and examined on behalf of the defendant, resumed the stand
880 for further Direct Examination by Mr. Janks; and testified as follows:

The witness: I would like to ask the Master a question if I can? There was some points in my testimony that I would like to correct now or correct later on.
The Master: You will have an opportunity to correct it later on unless that parties desire you to do it now.
A. It is nothing very material, but at the same time I would like to have an opportunity to correct it.
The Master: You will have the opportunity.
Mr. Robbins: I have no objection.
Mr. Jenks: Who has called your attention to it?
A. Nobody, sir.
The Master: Do you object to it now, sir?
The witness: Nobody, sir.
The Master: Do you object to it, Mr. Jenks?
The Witness: I will just state to Mr. Jenks, that in thinking it over I though of some things that I answered hastily that—
The Master: You may correct your testimony now, then.
The Witness: I would almost have to look it over before I could go back there.
Mr. Jenks: Perhaps you had better wait, then until you look it over.
A. Well, I recall one point, I think Mr. Jenks asked me if the deliveries of cash property appeared on the clearing house sheet and I can't recall now whether I answered whether it did or did not; I desire now to say that it does. The other part was as to the—as to what is known as the off-set price that is fixed by the board of directors each day for the settlement of contracts

and also the settlement price on deliveries. My recollection is that I said at that time that I could see no use of that.

881 In thinking it over afterwards, I could see that it was necessary to have that price fixed to have a uniformity with the clearing house in the settlement of these different contracts. That is all. It is almost immaterial but it is simply to state why that was fixed. That was all I believe that I think of now that I desire to correct.

Mr. Jenks: What is there about cash transactions that appear in the clearing house sheet?

A. If I had ten thousand bushels of wheat delivered to me, say on purchase for December at 73 cents, and a delivery price had been fixed at 73 cents, the party of whom I had bought it would simply deliver it to me by notice at 73, and if I had sold it at seventy-three and a quarter, for example, I would then have a quarter of a cent a bushel on that ten thousand bushels of wheat was coming to me through the clearing house, I having received the wheat by delivery notice at 73, and delivered it out to the party or parties to whom I had it sold at seventy-three and a quarter.

Q. In the case you put, what would be the cash transaction between you and the other two parties?

A. My settling man being upon the board during the hours of delivery as prescribed by the rules, would receive a notice that John Brown, we will say, delivered him ten thousand bushels of wheat on December contract at seventy-three cents; he would then take that notice—I would say that each notice would be five thousand—

Q. Oh, I will stop you. A. I suppose you wanted me—

Q. I will stop you; read the question to the witness.

(Question read.)

Q. That is the cash transaction between you, and the other two parties?

A. The only way I can answer that question is to describe it just exactly as I am trying to, the modus operandi.

Q. Would there be any cash transactions between you and the other two parties?

A. Well, what do you mean by a cash transaction?

Q. I mean would you pay out any cash or receive any?

A. In the case I have mentioned I had the wheat coming to me at seventy-three cents, and going out at and seventy-three and a quarter, I would receive from the clearing house

882 twenty-five dollars, a quarter of a cent a bushel.

Q. Would that be the only cash transaction between you and the other two parties? A. In that case, yes sir.

Q. And in that case, and you call that a delivery of wheat to you, would you ever give your check for the amount that the wheat would come to at that purchase price? A. No sir.

Q. Would anybody ever give a check to you for the purchase price of the wheat? A. No sir.

Q. Then you would [ever] ring that deal up through the clearing house and pay the mere payment of differences wouldn't you?

A. I don't consider it that way, Mr. Jenks.

Q. That would be the fact, wouldn't it?

A. I consider it actual delivery with me as far as I am concerned.

Q. That would be the fact?

A. I am not arguing the question of fact, I am saying that I consider the delivery notice—

Q. But you are here to testify as to the facts?

A. Yes sir, I have testified already to the fact.

Q. And you don't have to argue?

A. No, I am not trying to argue at all.

Q. Now the other point that you mentioned about the settling price fixed by the Board of Trade?

A. Are you referring now to the delivery or something else? They fix a price on the delivery day, they fix a settling price or a delivery price.

Q. Who does?

A. The board of directors or a committee connected with them, as provided by the rules.

Q. Well, the Board of Trade does that? A. Yes sir.

Q. Well, now, what is the delivery price that they fix?

A. In the case I have mentioned, say seventy-three cents, yes sir.

Q. They fix that as a delivery price? A. Yes sir.

883 Q. For what purpose is that delivery price fixed?

A. To have a uniform—

Q. Is it merely fixed so that the members of the Board may figure up the differences in the market price, and know to whom one diffenrence is going and from whom the other one is to be received?

A. That price is fixed as an off-set price so that everything can be uniform in going through the clearing house.

Q. How does it make anything uniform?

A. Why, instead of having a dozen or fifteen or twenty or fifty different prices to go through the clearing house, this delivery price is fixed so that everybody can pay to or receive from that price. That is the practical working of this system.

Q. Is that to pay and receive differences in market price?

A. Not in market price, necessarily, no sir.

Q. In what price?

A. Why I have already illustrated that if I have ten thousand bushels of wheat delivered to me yesterday, as I did, at seventy-three cents, and I have sold it at seventy three and a quarter, I have twenty-five dollars coming to me in that transaction.

Q. That is all you do have coming to you?

A. That is all I have, certainly.

Q. And that is all you get?

A. That is all I get, most decidedly.

Q. Now you are speaking of an actual transaction that occurred there, are you? A. Yes sir.

Q. Who delivered that wheat to you?

A. Logan & Bryan.

Q. Who did you deliver it to?

A. My recollection is I delivered five thousand of it to the Ware Commission Company and five thousand to Ware & Leland.

Q. When that wheat was delivered to you, it was done in what way? A. By notice as provided by the rules.

Q. At the time the notice was given to you, what did you do with it?

884 A. My man who attends to those things I presume, although I was not there, undoubtedly turned one five thousand by delivery notice to the Ware Commission Company and another five thousand to Ware & Leland.

Q. The whole ten thousand delivered to you was delivered by one notice, was it? A. No sir.

Q. Two notices? A. Two notices.

Q. Who delivered them to you?

A. I should presume an employe of Logan's,—

Q. I don't want you to presume?

A. Well, I could not answer that question because I don't know from personal—

Q. Who did you deliver them to?

A. I was not there personally and could not tell you. The only thing that I have is—

Q. You don't know; how do you know yourself that if these notices were handed to your man they were handed to him on the Board of Trade? A. Yes sir; I know that.

Q. And do you know that immediately your man did something on those notices—did he write something on them?

A. He wrote on the back of the notices.

Q. What?

A. The five thousand to be delivered to Ware Commission Company and the other five thousand to Ware & Leland.

Q. How much did these notices call for?

A. Five thousand bushels of wheat each.

Q. And what was written by your man on the top of each?

A. I didn't see what he wrote there, I can only assume the custom of the trade as to what he wrote.

Q. According to the custom of the trade, what did he write on the back?

A. Why he would write on the back, Ware Commission Company, five thousand December wheat at seventy-three and a quarter.

Q. Well, the notice is that, isn't it?

A. That is the notice.

Q. Now, what did he write on the back?

A. That is what I am trying to describe to you sir.

Q. Well, sir?

A. I have already stated there he would write on
885 the back five thousand of it to Ware Commission Company at seventy-three and a quarter, and five thousand to Ware and Leland at seventy-three and an eighth.

Q. I know you have stated that and you have also stated that the notice contained only five thousand?

A. Beg your pardon, sir, I stated there were two notices; I received the ten thousand bushels of wheat.

Q. I am talking about one notice?

A. If you will confine yourself to one notice I will answer the question.

Q. Now, I want to know what you wrote on the back of one notice, according to the custom?

A. Well, we will take five thousand of the ten thousand that I had coming from Logan.

Q. You had better take one notice, which is according to the custom? A. Only take one notice, I could not just—

Q. Take one notice, what was written on the back of it?

A. I will say to you right now, Mr. Jenks that, I don't know sir; I don't know what was written on that at all.

Q. Very well?

A. If you want I should describe the custom of the trade, I will do it to you.

Q. According to the custom of the trade, what was written on the back of one notice?

A. Logan & Bryon handed to my settling clerk, the man that attends to this—

Q. That is not what was written on the back. What was written on the back of the notice?

A. I don't know, sir, what was written on the back of the notice. I never saw it myself.

Q. Well, according to the custom, what was written on the back?

A. Well, I don't propose to answer any questions about custom at all; if you want to know about this business I will try and tell you.

Q. Mr. McHenry—

A. I will tell you very frankly now, Mr. Jenks, if you want I should explain this business to you, I am perfectly willing to do it.

886 Q. Yes?

A. I am not going to stay here and be annoyed and bothered with questions about something I know nothing about. If you want to know the custom of the trade in the operations I will be delighted to give it to you.

Q. Now, Mr. McHenry, I think—

A. I am not quite used to all the technicalities of the law or lawyers.

Q. Yes, but though you have not answered some of the question understanding the question?

A. I have tried to say—if you put your questions understandingly I will try to answer them understandingly.

Q. Well, we will start again? A. All right, sir.

Q. And see if I can do it. According to the custom of the trade, you think that a notice of a warehouse receipt for five thousand bushels of grain was delivered to your man yesterday on the floor of the exchange room of the Board of Trade?

A. To the best of my knowledge and belief, yes sir.

a

Q. Now if such notice was delivered to him he delivered that notice right then and there to somebody else, didn't he?

A. Yes sir.

Q. Now, just before he delivered it, he wrote something on the back of that notice. Now what I want to know is, what, according to the usual custom was it that he wrote on the back?

A. Well, if you will give me a notice, I will write it right out and show you.

Q. Well, can't you tell what he wrote on the back?

A. You are asking me something that he wrote; if you want I shall tell you what the custom is, I can do that.

Q. Well, suppose you tell what was written on the back by the custom or in any other way?

A. Well, by the custom, Logan & Bryan delivered me five thousand bushels of wheat—

Q. No, that was not written on the back. I want to know—

A. I beg your pardon, sir, it was written on the 887 back; it should have been written on the back and was written on the back undoubtedly. "W. E. McHenry, five thousand at seventy-three cents."

Q. Is that the end of it? A. No sir, certainly not.

Q. What was written on the back?

The Master: Besides that. What else was written on the back besides the amount, the figures you just gave or should have been written?

A. Well, then, I have already started to explain the modus operandi of the handling of this property as plainly as the English language could make it. It seems to me either I am very dense or else the counsel is very dense, I don't know which. I have already [—] that this five thousand of wheat when it came to me at seventy-three cents from Logan & Bryan, had written on the back of this notice or contract from them to me, that the property was made up by them, five thousand of wheat at seventy-three cents. My man presumably received that, then wrote on the back of it, the Ware Commission Company had five thousand at seventy-three and a quarter; that is the modus operandi of these settlements.

Mr. Jenks: That is just what I have been trying to get?

A. Well, sir, you would have got it fifteen minutes ago if you had tried right hard.

Q. Now how much did W. E. McHenry pay at that time?

Mr. Robbins: I object; he has gone over that two or three times.

Mr. Jenks: Oh, you did.

Mr. Jenks: You didn't pay anything, did you?

The Master: Answer it, did you pay anything at that time, did they collect from you?

A. Nothing sir.

Mr. Jenks: How much did the man who received the notice from your clerk pay at that time? A. I don't know sir.

Q. Did he pay anything?

A. I don't know sir, the five thousand of wheat may have stopped with him, and he might have paid for it for all that I know.

888 Q. Supposing it did stop with him?

A. He would then give a check.

Q. Right there and then? A. No sir, certainly not.

Q. Of course not? A He would then go—

Q. He would not give any check until he got the warehouse receipt would he? A. Undoubtedly not.

Q. And where would he receive the warehouse receipt?

A. From the party who originally made up the five thousand bushels of wheat.

Q. At his office? A. He would receive it at his office.

Q. Yes? A. Yes sir.

Q. And that is where he would pay the check?

A. That is where he would pay the check.

Q. And no check in payment for that wheat would go through the Board of Trade clearing house? A. No sir.

Q. Now, that is just what you stated yesterday. Do you call such a transaction as you have just described an actual delivery of the commodity according to the customs of the Board of Trade?

A. According to the customs and rules of the Board of Trade, I do, sir.

Q. An actual delivery?

A. An actual delivery of property.

Q. Mr. McHenry, I don't know whether I asked you this yesterday; if I did, you will remember better than I. In receiving orders from your customers to buy or sell commodities on the Board of Trade are there sometimes accompanying those orders a stop order to limit the loss? Did I ask you that yesterday?

Mr. Robbins: Well, I object to that.

The Master: Answer the question now.

Mr. Jenks: Well, answer the question now.

A. It occasionally happens, but very rarely.

Q. When it does happen that a stop order accompanies the order of purchase or sale, is that order executed just the same on the Board of Trade as it would be if the stop order was not there? A. Yes sir.

889 Q. Then when the price fluctuates so as to come to the stop order price does it require any further directions from the customer before the Board of Trade man will close that transaction out on the floor?

A. An order filled under instructions of that kind is, and should be closed as near the stop order price as possible.

Q. And without any further directions from the customer?

A. Yes sir.

Q. And if the transaction is closed out at the stop order price, what is then done with reference to closing the entire matter so far as the customer is concerned?

A. If it happens—

Q. But it is closed out, it is closed out?

A. Well, wait just a moment.

Q. Now between you and the customer, what is done to end the whole business?

A. Well, to answer that question I shall have to say something else.

The Master: Proceed.

A. For the simple reason that I might buy five thousand bushels of wheat for John Brown to-day at seventy-nine cents for May delivery; he would tell me to stop that at seventy-six

cents; wheat did not reach seventy-six cents to-day, but to-morrow morning it opened at seventy-five and a half cents, it would then be my duty to close that contract of his at the nearest to seventy-six cents that I could. He would then owe me a half a cent a bushel more than his stop or order price.

Q. Well, you would have margins up, wouldn't you?

A. Well, I might. I might not have anything more, just the three cents, the difference between seventy-nine and seventy-six.

Q. What are usual margins that you have there?

now

Mr. Robbins: Well, that is going over the same he went over yesterday.

The Master: I think the witness testified yesterday that they were variable.

Mr. Jenks: Now suppose you did close it out as near the stop order price as you could, what else would be done
890 in order to terminate the whole transaction between you and your customer?

A. I would make up an account, purchase and sale, for five thousand bushels of wheat bought for May delivery at seventy-nine cents, sold for seventy-five and a half, that is, assuming of course that I could not stop it at seventy-six; I would charge him with the loss, including the commissions and government tax.

Q. And the loss would be the difference in the two prices bought and sold? A. Yes, sir.

Q. Then when that was collected, that would end the whole business as between you two?

A. As between myself and the customer.

Q. Yes?

A. When he had paid the half a cent a bushel that he owed me over and above the price that he wanted to stop it at, it certainly was.

Q. You mean below the price?

A. Below the price, yes sir.

Q. That would end the whole thing?

A. So far as he and I were concerned, yes sir, if he had paid what he owed me.

Q. Do you know anything about hedging transactions on the Board of Trade?

A. Well, I hardly know what that question means, Mr. Jenks.

Q. Do you know what the term hedge means on the Board of Trade?

A. Why, there are a great many different meanings to it.

Q. Can you give us one meaning? A. Yes sir.

Q. To the word "hedge" on the Board of Trade?
A. Yes sir.
Q. What is it?
A. I may buy fifty thousand bushels of wheat for May delivery in Minneapolis and hedge it by selling it in Chicago.
Q. How do you close out that hedge in Chicago?
A. Whenever the price suits me I sell out the wheat in Minneapolis and buy it in Chicago.
Q. Then how do you close out the transaction of purchase and sale in Chicago so as to end it, have it entirely ended?
A. Why I have sold the wheat in Chicago and I buy it back here.
Q. Yes?
A. But this goes through the regular routine of the
891 Board of Trade customs and rules.
Q. And you ring it up and it goes through the clearing house?
A. I might ring it up, or I might deliver the actual property. The circumstances might arise that I would bring the fifty thousand bushels of wheat from Minneapolis here and deliver it on my contract.
Q. But you would not if you had bought it there and sold it out there would you? A. Certainly not.
Q. Well that is the case you put?
A. Well, I did not quote that in its entirety.
Q. Bought there and sold out there?
A. I stated to you that I bought fifty thousand in Minneapolis and sold fifty thousand in Chicago.
Q. Yes?
A. At a price that I thought there was a good hedge in Chicago as against my Minneapolis purchase.
Q. Yes?
A. Now if the Chicago commodity should continue to go up, and I could not fill my sales here without bringing the wheat, the actual wheat from Minneapolis, I would bring it down here and deliver it on my contracts.
Q. Did you ever do such a thing as that?
A. I never did it for myself, I have done it for other people.
Q. Who did you do it for? A. I can't recollect now.
Q. When was it? A. Oh, it is years ago.
Q. How many years ago?
A. Oh, I should say twenty to twenty-five, twenty or twenty-five years ago.
Q. How many transactions of that kind, sir, did you ever have? A. I can't tell you, sir, without reference to books.
Q. Did you ever have more than one?
A. Yes sir, a good many of them.
Q. A good many just like that? A. Yes sir.

Q. Twenty-five years ago? A. Yes sir.

Q. Have you had any transactions like that within 25 years?

A. I could not tell you, Mr. Jenks, without reference to my books, whether I have or not.

892 Q. Mr. McHenry if it were not for the customs of the Board of Trade of ringing up deals and settling the transactions through the clearing house if that could not be done by settling those trades by accepting [ot] paying the differences in the market price would that have any effect upon the volume of trades on the Board of Trade in the city of Chicago dealing in futures?

Mr. Robbins: Objected to.

The Master: Overruled.

Mr. Robbins: Objected to because that calls for the opinion of the witness.

The Master: Well, he is an expert, he may answer.

A. It would be almost impossible to answer that question intelligently, although I should presume it might curtail the business to some extent, still in stocks in New York, where they deal in cash deliveries of property, I can't see that that curtails the amount of trade at all, so that the question cannot be answered intelligently at all, as to what the possible effects would be of wiping out this settlement and the ringing up of trades and the methods that are used now upon the Board of Trade.

Q. Now, don't you know, as a matter of fact, that people in Chicago deal in stocks in New York, buy them without paying a cent for them?

Mr. Robbins: I object to that.

The Master: Objection sustained.

Mr. Jenks: Then I move to strike out that part of his answer relating to stocks.

Q. You have testified in answer to that same question before haven't you? A. I think I have.

Q. Well, sir, do you know any more about it now than you did when you testified before, or do you know any less?

A. I don't know that I do.

Q. Isn't it a fact that if on the Board of Trade they had not an opportunity of ringing up their deals without a receipt and delivery of the property and paying for it, that it
893 would curtail the business of dealings there in futures or options?

Mr. Robbins: Objected to for the same reason.

The Master: On the Board of Trade, as I understand that?

Mr. Jenks: Yes sir.

The Master: Overruled.

A. I think I have already answered just now that it possibly might curtail the volume of business.

Q. Have you already testified at some time or place that it would cut down the volume of business at least one half and there would not be money enough in the country to carry on that business receiving and delivering a commodity and paying for it?

Mr. Robbins: Wait a minute. I object to that. This man is his own witness.

Mr. Jenks: He is a member of the Board of Trade.

Mr. Robbins: You can't put him on the stand and then try to impeach him.

The Master: Objection sustained.

Mr. Jenks: Is there money enough in the country to carry on the volume of business that is conducted on the Board of all Trade in Chicago, if those dealings in futures should result in a delivery and payment for the commodity?

Mr. Robbins: Objected to as calling for the witness' opinion.

Mr. Jenks: Well, he may answer, I guess.

The Master: Overruled. If you know.

A. Well, sir, I can't answer that question intelligently. I have seen so much business done in this country and in so many ways—

Mr. Jenks: Without any money at all?

A. Well, I don't know as to that, but I am not prepared to say absolutely that the business could not be done, and still, I am very frank to say as I have stated before in my answers, that I have no doubt that if the business were conducted without these settlements, and without the commodities and
894 under the present rules that it would be curtailed.

Q. What would curtail it?

A. First, a lack of absolute stocks on the Board in Chicago, the actual property being here.

Q. The actual grain you mean?

A. The actual grain being here.

Mr. Robbins: Note my objection to that question "What would curtail it?"

The Master: Go ahead.

Mr. Robbins: I suppose the Master overrules it.

The Master: Overruled.

Mr. Jenks: Go on.

A. Because under the present system there is a large amount of property sold in Chicago that is in store all through the country.

Q. Well, that is one thing? A. That is one thing. the

Q. How about money as another thing?

A. Well, it would be greatly a question of individual opinion as to whether or not the money could be gotten to handle the volume of business done upon the Chicago Board of Trade, but I have never seen a time in my life when I wanted money and was willing to pay for it and put up sufficient collateral but what I could get it, regardless of the amount.

Q. And if you don't happen to have the collateral?

A. Then it depended on my credit with the man I wanted to borrow money of.

Q. Sometimes you could get it and sometimes you could not? A. That is right.

Q. Were you in business in Chicago in the grain business at the time of the Harper deal?

A. Which one, which one do you refer to?

Q. The Harper deal in Cincinnati?

A. There have been two Harper deals in Chicago.

Q. I mean the one that broke up all the banks in Cincinnati?

A. No sir, I was not in business then.

Q. Is there a book in your business which you call an option book? A. Yes sir.

895 Q. Did you bring one with you? A. I did not, sir.

Q. Were you subpoenaed to bring an option book with you?

A. I was subpoenaed to bring some books for 1900. I was in

not in business in 1900, my present business. I was then working for the United States Government, the Internal Revenue Department.

Q. When did you commence your business?

A. First of June, 1901, after I left the Government service, after I resigned from there.

Q. Did you keep the same kind of an option book in your office that is kept by other commission men in Chicago, members of the Board of Trade?

A. You say, do I keep a similar book?

Q. Yes, and did you when you were in business before?

A. You say, do I keep a similar book?

Q. Yes, and did you when you were in business before?

A. Yes sir, they are practically the same now as then.

Q. Can you tell us what appears on the option book, what entries are made on the option book?

A. Well, the only way I can answer that question is to illustrate.

Q. All right?

A. It is the purchases and sales from and to members of the Chicago Board of Trade.

Q. Is the option book kept for the purpose of showing transactions with other members of the Board, or is it kept for the purpose of showing transactions with your customers?

A. With the other members of the Board and the customers.

Q. Surely? A. And the customer, if he desires it.

Q. Well, how can the customers desire it, what is kept there then if he desires it?

A. If you are doing business for me, and desire to see any transactions I have made for your account, I should be only too delighted to bring you in and show you my book. That is what I mean by the customers looking at them.

Q. Well, but what do you enter on the option book
896 that relates to your customer or his deal?

A. We will say that I have received an order from you to-day to buy five thousand bushels of May wheat; I buy it of Mr. Robbins, a member of the Board, as I presume he is, that is entered on the bought side of what is called the option book, five thousand bushels and the price. There is a place in there or column which denotes who I bought that for, ordinarily an initial is used, A. B. J., if I was buying it for you. Now you give me the order to sell that property, on the opposite side of that book I enter five thousand sold to Boys, we will say, if he was then a member of the Board; that is entered up too, also in this column, is entered, A. B. J. for account of you.

Q. Then the only thing that appears on the option book relating to the customer would be in some cases his initials?

A. Oh, it might be his initials or it might be his full name, ordinarily an initial is used as an abbrevation to save time.

[—] But that appears very seldom on your option book, is that right? A. Always appears sir.

Q. The name of the customer?

A. Yes sir, or so that the customer can be designated.

Q. It always appears there the name of the other member of the Board of Trade with whom you dealt? A. Yes sir.

Q. That appears? A. Yes sir.

Q. But does the name of the customer always appear on the option book?

A. The name of the customer or the initial which would designate who the customer was always appears upon my option book.

Q. And did it always appear on the option book that you kept? A. Yes sir.

Q. Is that the rule among members of the Board of Trade in keeping their option books?

A. I know nobody's else business but my own; I should presume it was the custom, at least, if not the rule.

Q. Now, I will suppose a case that on some morning
897 you had ten orders of ten different customers to purchase ten thousand bushels of May wheat for each of them; you go on the Board of Trade and you execute that order by buying from Schwartz & Dupeee one hundred thousand bushels of May wheat at a price, what would appear on your option book as to that transaction?

A. Twenty-five thousand bushel lots bought of Schwartz & Dupee on this option book; they are always entered up in five thousand bushel lots that is, on my account, I don't know anything about anybody else.

Q. That is, you would have on your option book,—you would take a page for that probably, wouldn't you?

A. There is two hundred and fifty thousand on a page on each side, on the bought side and on the sold side.

Q. Yes in five thousand bushel lots?

A. Yes sir, and five thousand bushels, that is printed in there.

that

Q. You would enter on your option book, bought of Schwartz & Dupee, five thousand May wheat at so much, you would carry that right down, ditto, for each five thousand bushels, would you? A. Yes sir.

Q. Now you bought that wheat for ten different customers. Would the names of those ten different customers appear on that page? A. They would, sir, of my books.

Q. And they would appear how?

A. Either the full name or the initial which would designate who they were.

Q. Where would they appear?

A. In the column printed for that purpose.

Q. Well, you have got ten customers from each of whom you had an order to buy ten thousand? A. Yes sir.

Q. Now you would put down there opposite the first five the initials of the customer, opposite the next five you would put ditto for the initial?

A. I might or I might write the initials out.

Q. Or the names?

A. Or the names. Ordinarily I would say ditto to save time.

Q. Then the next five you would put to somebody else
898 and under that a ditto for the second five, and so on down until you got through with the whole lot?

A. That would probably be the way it would be done.

Q. Now suppose the next day you should sell a hundred thousand bushels of May wheat to Schwartz & Dupee, what

would you do then when you got back to your office with reference to your option book?

A. You are presuming now that I sold this for the same different ten people or for somebody else?

Q. I don't care who you sold it for?

A. That is immaterial, that does not cut any figure with you, you are trying to state a transaction?

Q. You sold it to Schwartz & Dupee?

A. It would go upon the sold side of my option book, twenty-five thousand bushel lots of wheat sold to Schwartz & Dupee and Company for May delivery, for account of whoever it might be. It might be these ten different people that wanted to sell out their hundred thousand of wheat; it might be for somebody entirely different.

Q. Then how would you close that account with Schwartz & Dupee, the purchase of a hundred thousand bushels and the sale of a hundred thousand bushels May wheat?

A. If none of it had been settled any other way I would make what we call direct settlement.

Q. And how would you make it?

A. I would enter up upon the proper books in my office a hundred thousand bushels of wheat bought and sold of Schwartz & Dupee—we will assume for the sake of argument that it was bought at 76.

Q. Yes?

A. And sold to them at 77, by which I would have a thousand dollars coming to me.

Q. Yes?

A. That would then be entered upon my ring book.

Q. Yes?

A. As a direct settlement; from that it would be entered upon the clearing house sheet.

Q. The next morning? A. The next morning.

Q. And you would put on the clearing house sheet what with reference to that transaction?

899 A. $1,000 due me from Schwartz Dupee & Company.

Q. Yes? Then what would you do with the clearing house sheet?

A. I would within the hours prescribed by the rules, I would turn it in there.

Q. Then what would you get from the clearing house?

A. I would get a certified check signed by Samuel Powell, as manager of the clearing house for that amount of money.

Q. $1,000.00? A. Yes sir.

Q. Then what would become of the purchase and sale that you had with Schwartz & Dupee?

A. That, so far as my books are concerned, would be wiped out.

Q. So far as Schwartz & Dupee's books are concerned, how would it be? A. It would be the same thing.

Q. Wiped out? A. Yes sir.

Q. So far as the two contracts were concerned where would they be?

A. They would be so far as—the two contracts you mean?

Q. Between you and Schwartz & Dupee?

A. Oh, that would be wiped out completely.

Q. They would be wiped out? A. Yes sir.

that

Q. Now in case you have got ten customers yet who have ordered you to buy 10,000 bushels of wheat each?

A. *Yes sir.*

Q. Who are still on your books? A. Yes sir.

Q. How do you close out with them?

of them

A. As each one or all gave the orders to sell their property it would be sold in the open market to anybody who chose to buy it at the price.

Q. Now we will suppose, as they have ordered ten purchases each of 10,000 bushels that each one of them next week would order you to sell 10,000 bushels to close their account there, what would you do?

A. I would go into the open market and sell the ten 10,000 bushel lots, that would make a hundred thousand bushels, to whoever would buy it.

Q. Would you be particular to sell it in ten thousand bushel lots, or would you sell it in a hundred thousand bushel lot if you could?

A. Why if I had ten, ten thousand bushels orders
900 all at once, and somebody bid for a hundred thousand, I would be just as likely to sell it that way as any other.

Q. You would be a little more like to do it wouldn't you, so as to have it all in a lump?

A. Not necessarily, no sir; it would depend altogether whether I could get a little better price for the large lot than I could for the small lot.

Q. Well, anyhow, you would sell it?

A. I would sell it in the open market.

Q. Then how would you close those transactions with the ten customers?

A. Simply make up an account purchase and sale for each one of the ten, of ten thousand each, bought for their account at the price, sold at the price, charge them the commission of the government tax, and there they would have either a debit

or a credit, just as the case might be, whether it was profit or loss.

Q. And then, which ever way it was, a check would be given by either one party or the other?

A. You are talking now about the customer?

Q. Yes?

A. Either draw mine to the customer, if they desired it, or it would be credited to their open account if they had one with me.

Q. But supposing they wanted to end everything with you; would you give each one of them a check? A. Yes sir.

Q. And that check would be made up the difference between the two market prices less you- commissions and the *government* tax? A. Yes sir.

of

Q. Well, now, all that was done within a week from the time of the initial deal, and the month of May we will say, which was the option dealt in, has not yet come around. When the month of May does come what do you have to do with reference to those transactions which you have closed with the member of the Board and which you have closed with your customers?

A. Why I might have substituted in accordance with the rules of the Board—

Mr. Robbins: Let him answer.

901 Mr. Jenks: We have got those deals ended?

A. So far as the customer is concerned.

Q. And run out? [A.] So far as Schwartz & Dupee are concerned? A. Yes sir.

Q. And it is all ended and settled?

A. But you have left out one thing.

Q. Well?

A. And that is that you don't assume that the hundred thousand bushels of wheat that I sold Schwartz & Dupee, that I bought originally for these ten customers, was for these ten customers; it might have been for somebody else.

Q. Well, suppose it was for the ten customers? A. Ah.

Q. Now you have ended that?

A. We have ended that whole matter, this hundred thousand wheat that I have bought for ten different people of Schwartz & Dupee, all one trade.

Q. Yes?

A. Sold to Schwartz & Dupee in one lot for the ten different people; the matter so far as the customer is concerned is cleaned up. They have either paid me what they owe me, if they owed me anything, or I have paid them. Schwartz Dupee and I have no transaction open on the Board of Trade.

Q. Yes? A. Now the whole matter ends.

Q. Now comes along the first day of May, the day of delivery, what do you have to do?

A. Why, [at] to that transaction?

Q. Yes?

A. Nothing whatever, I have no wheat coming from Schwartz—going to Schwartz, Dupee & Company, and no wheat coming from them.

Q. You have no transactions? A. Not at all, sir.

Q. Now, lets take the other way, the one that you started on a moment ago. We will suppose that the first transaction, the purchase from Schwartz & Dupee, was for ten different customers; the sale to Schwartz & Dupee was for ten other customers, not the first ten at all; then what would you do when it came the first day of May?

A. Well, that would depend altogether upon the position that ten other customers occupied at the time. They might still—

902 Q. You have rung up the deal with Schwartz & Dupee? A. I am through with Schwartz & Dupee?

Q. Yes? A. Yes, sir.

Q. Now you have got ten customers on each side of that deal? A. Yes sir.

Q. And you haven't any wheat?

A. Oh, that don't necessarily follow.

Q. Where do you get it? You have bought it and sold it to Schwartz & Dupee?

A. But I may have been trading for 500 different people, I might have five million bushels of wheat coming on the first day of May of that year.

Q. Well, you might have had a hundred million coming on that day? A. That is true.

Q. It would not come, would it, if you had a hundred million coming?

A. No, I don't presume that amount would come. I have seen more times that more would come than I thought was coming I can assure you.

Q. And you have seen times when it did not come so fast as some people wanted it? A. Yes.

Q. Now, isn't it a fact, Mr. McHenry, that all of those deals are, as a rule, rung up between members of the Board and closed out between the commission men and is customary before the delivery day arrives?

Mr. Robbins: I object to that on the ground that the witness has not shown familiarity with the business of any person but himself, and is not in the position to testify what proportion of trades of other members of the Board are rung up and what proportion are not.

Mr. Jenks: Mr. McHenry, do you know whether, as a rule, all of those transactions are rung up before the delivery day arrives? A. I do not, sir.

Q. Do you know that that is so in your own business?

A. I know that a large proportion of them are.

Q. And what per cent do you think are rung up in
903 your own business of futures I mean?

A. Oh, I should presume that—as I have testified several times before, 95 per cent would be a fair average.

Q. Of the trades that are rung up?

A. Of the trades that are rung up; as to the whole volume of trade I would presume that would be a fair average.

Q. Now in your business do you keep such a book as a ring book? A. Yes sir.

Q. What is contained in the ring book?

A. That is purely what might be known as a blotter to keep a record of the settlements each day, as made between members of the Board?

Q. Is there an object in your business to get those settlements made as soon as possible, that the deals may be rung up?

A. Yes sir.

Q. You have settlement clerks, whose business it is to see that all deals on the Board are closed by ringing up as soon as a ring can be made, haven't you? A. Yes sir.

Q. And whenever the clerks who are employed for that [—] a ring exists, what do they do so far as the ring book in your office is concerned?

A. Well, I will have to illustrate again as I did yesterday on that same point, if you desire me to answer the question that way.

Q. Well, what you illustrated yesterday was the ring. I am now asking what would appear on the ring book.

A. Well, I will have to take an example to illustrate again.

Q. Very well.

A. 5000 May wheat sold to A. B. Jenks at 77.

Q. Well, does that appear at the top of the page on the ring book?

A. Well it might appear at the top or in the middle or on the bottom, just wherever it happened to be during the days business.

Q. Yes?

A. There is no particular place on the ring book that it should appear. 5000 bought of Mr. Robbins, at 76, that I hav-
it
ing sold to Mr. Jenks, Mr. Jenks to Mr. Robbins, Mr. Robbins back to me, makes what is known in the parlance of the
904 trade as a ring. The settling price has been fixed for today, we will say, at 76, settlement or off set price has

been made and fixed at 76. Now I have that 5000 of wheat bought of Mr. Robbins at 76 and sold to Mr. Jenks at 77. I have $50 coming in that. As the settlement or off-set price is fixed at 76, so far as myself and Mr. Robbins is concerned, there is no—I have nothing to do with that; Mr. Jenks owes $50 on that, that is entered upon my ring book in the space prepared for the purpose. The next morning it goes onto my clearing house sheet as a debit to me for Mr. A. B. Jenks, of $50. We will assume now that that is all the transactions that I have for that day, just for example. The clearing house manager, at the proper time, makes me a check for $50 which is certified it

and gives to me presumably, Mr. Jenks, another member of the clearing [—] has already paid in, or having another transaction has already paid in the $50 that he owes.

Q. So that we settle up then a 5000 bushel deal upon payment of $50 on my part and the receipt of it on your part?

A. So far as that ring is concerned, yes sir.

Q. Now what I was after was, what appears on the ring book, as you have stated it, it seems to me you have got to have your trades upon the ring book, but that is not the fact, is it? You have on the ring book just the trades that will ring up?

A. Just the settlements that have been made.

Q. Yes. A. That is all that goes upon the ring book.

Q. Yes, where there is a ring.

A. Where there is a ring, yes sir.

Q. Now where are the entries made on the ring book with reference to the time that it is ascertained there is a ring?

A. Oh, they may be made in the afternoon, on the same day the ring is made or early the next morning.

Q. Yes.

A. Just according to the convenience of the clerk.

Q. But that book is kept merely for the purpose of showing deals that are rung up? A. Yes sir.

Q. Now what book do you keep which shows the de-
905 liveries of commodities which you have bought?

A. Well, since I started in business this time, as my business in this line has been so brief, I kept no special book in that line; the actual deliveries of property.

Q. Do you know any? A. Beg pardon?

Q. Do you know of any commission houses, members of the Board of Trade, that keep a book to show actual deliveries?

A. I don't know anybody else's business but my own.

Q. But you know a little about other people's business, don't you?

A. I also endeavor to know nobody's business but my own own, that keeps me pretty busy always.

Q. Did you ever keep a book that showed the actual deliveries of commodities? A. Yes sir.

Q. By you? What did you call that book?

A. That was what was called the cash receipt and delivery book that was where every warehouse receipt—

Q. What?

A. That was what was called the cash receipt and delivery book; that was where every warehouse receipt that I received and every warehouse receipt that I delivered, was entered.

Q. Have you any idea where that book is?

A. Not the most remote.

Q. How long since you kept it? A. 1881 or 1882.

Q. Have you kept a book of that kind since that time, 1882?

A. Well, I can't answer that question; I have had such a mass of books, Mr. Jenks, that I can't answer that question intelligently at all.

Q. Now in 1882, and previous to that time, no deliveries were made on the Board of Trade or pretended to be made by these notices of warehouse receipts, were they?

A. I can't answer that question without referring to the time that that rule was passed for this system of delivery.

Q. Well, it was way since then?

A. I know that up to September 1st, 1881, the old system of delivery was still in existence and this new one was not.

906 Q. Yes?

A. And my recollection would be as I stated yesterday, that this new system was adopted in 1883, or '84, I can't recollect when that was done; possibly it might have been a little later than that, but I can't recall just when it was adopted.

Q. You have not kept a book since 1882 for the purpose of transcribing and keeping thereon, the actual deliveries made to you or by you?

A. I would not say that I have not, Mr. Jenks, although, as I stated, that there has been such a mass of these things that I can't recollect.

Q. Well, you got down to a time somewhere where you did not keep any, and if it was not '82, somewhere since then you ceased to keep such books, didn't you?

A. I should say I had such a book as that as late as '87 or '88 but still I am not positive about it.

Q. Well, do you know it to be a fact that at some time you ceased to keep such a book?

A. Oh, yes, I should say after '87 or '88 I ceased to keep such a book.

Q. Well, then in the '90's, you did not have such a book?

A. No sir.

Q. Is it true that you did not keep such books because the items of deliveries and payments by check did not amount to anything in your business?

A. No sir, that was not the reason.

Q. What was the reason you did not keep such a book?

A. That I was not in a position where I was handling the amount of actual cash property that I did when I kept such a book.

Q. Of course. And the cash property you handled after '89 did not amount to enough to keep any record of it at all; was not that a fact? A. No, I won't say that either.

Q. Well, that comes pretty near being true, don't it?

A. Well, you might put it that way if you chose.

Q. Well, that is about the fact, isn't it, Mr. McHenry?

A. Yes, I guess that is pretty near right, but of course the amount received was as I told you that I was not in a
907 position to handle the cash property that I did when I kept that book.

Q. Yes.

A. That was the main reason that I ceased to keep it.

Q. Mr. McHenry, you kept right along in business on the Board of Trade down to '90 when, '98?

A. Well, I was not in the brokerage or commission business, I was what you might call a-trying to do a little brokerage business, a little scalping business, but I was not in the business regularly, as I am now.

Q. What is scalping business, Mr. McHenry?

A. That is where a man we will say, buys or sells 5000 bushels of wheat and tries to get a quick profit out of it, either one side or the other.

Q. How does he try to get a profit out of it?

A. He sells 5,000 bushels of wheat at 77, and he can buy it back at 76 7-8, he has made $6.25.

Q. Yes, and if it goes the other way, he has lost about the same amount?

A. Well, he may lose that and a good deal more, just as he feels inclined. That is purely a question of option on his part.

Q. Is that kind of business done on the floor of the exchange room of the Board of Trade?

A. Oh, there are what are known as scalpers there.

Q. Do they—

A. I use that term in contra distinction of a broker or a commission merchant.

Q. Well, it is a good term; we have had it here before today. A. Yes sir.

Q. Scalpers? A. Yes sir.

Q. Have you— A. I wish I was successful.

Q. Now I want to know about that scalper. The scalper that makes a deal there at the pit, does he intend at the time he makes the deal, to deliver the stuff and pay for it?

A. I don't know, I am sure.

Q. Or receive it and pay for it? A. I don't know.

Q. Well, you have been a scalper?

908 A. I have been a scalper and I have had property received and delivered to me when I was a scalper, actual property.

Q. But when you were a scalper, and you scalped purchases, did you intend to receive the property and pay for it?

A. I never made a transaction upon the Chicago Board of Trade in my life that I did not intend to receive or deliver the property if I was compelled to.

Q. How many transactions did you ever make at the pit on the floor of the Exchange room where you thought at the time you made the transaction that you would be compelled to receive and pay for the commodity?

A. I could not answer that question.

Q. Did you ever make one? A. What is that question?

(Question read.)

A. I never made a transaction upon the Board of Trade in my life either as a scalper or as a commission man, that I did not feel that I might be compelled to receive or deliver the actual property upon that transaction.

Q. At the same time, did you also feel that you could close out that deal before the time of delivery arrived?

A. Yes sir.

Q. And whenever you made a purchase at the pit, didn't you know that you could make a sale of that property before the time of delivery came? A. Yes sir.

Q. And in all your scalping deals there, were they made with the intention at the time of the purchase, of closing out that deal before the day of delivery and settling the transactions by the mere receipt or payment of the difference in market prices?

A. I have already answered that question, Mr. Jenks.

Q. That that is so? A. No sir, not at all.

Q. What was it?

A. I have stated that I never made a transaction upon the Board of Trade in my life, either as a scalper or as a commission merchant, that I did not feel and know that I could be compelled to receive or deliver the actual property on that transaction. What I thought at the time I made any particular trade would be impossible for me to answer.

Q. Then I understand you now, every purchase you

909 ever made at the pit you knew you would be compelled to take the property that you bought?

A. If it was tendered to me, yes sir.

Q. But that is not what you stated before?

A. What did I say?

Q. You said that you knew you would be compelled to take it.

A. I stated that I knew that I had to take it, just as I state now, if tendered to me.

Q. Why? [—] That is a distinction without a difference.

Q. Leave out that tender to you.

A. If I buy this building of you and you don't tender it to me, why I don't presume that I should pay you for it unless you tender it or tender the deed for it.

Q. That is right. But if you contracted to buy this building and we made a verbal contract that you would buy the building from me, you would expect at the time we made that contract, that I would make a deed to you and you would expect to pay for the property, cash down, is that it?

A. That would depend altogether on how the contract was made. If I agree to pay for it cash, I certainly would. On would the other hand, I would say, if I sell this property to Mr. Boyd at $5000 advance and I would ask you to make a deed to him, and either you or Mr. Boyd pay me the difference between the two prices.

Q. Certainly, now that would be buying an option.

A. No, it is not, necessarily.

Q. That would be buying an option?

A. Not necessarily, no sir.

Q. How?

A. Not necessarily, I might make an absolute contract with you to buy this building.

Q. Yes? A. For $500,000.

Q. Yes.

A. And say to you that when you furnish me with the abstract and the deed that I would give you $500,000 in money?

Q. Yes.

A. I might go right out of the room and meet Mr. Boyd and he would say, "Mr. McHenry, you have got this building have you?" "Yes." "What did you pay for it?" "$500,000." "How are you going to pay for it?" "Going to pay cash for it." "I will give you $505,000 cash for it." "All right, sir, I will sell it to you."

910 Q. But it would cost you more than a million?

A. Oh, yes, that might all be.

Q. It would require more than a million dollars for this property.

A. I was simply using this for illustration. Now I would go to Mr. Boyd or you and I would say, "Gentlemen, now either one of you owe me $5000, and Mr. Jenks you make the

deed to Mr. Boyd or make it to me, and I will make it to Mr. Boyd," in either case I would get the $5000.

Q. How would we ring up that deal?

A. That would not be rung up again.

Q. It would be rung up when you got the five?

A. Beg pardon?

Q. It would be rung up when you got the five?

A. As far as I was concerned, yes sir.

Q. I don't think that is very much like Board of Trade deals. What is there about transferring deals on the Board, that you make a deal with me, both of us being members of the Board, by which you buy something from me. What is there about transferring that deal, so far as you are concerned, and directing me to put it down to somebody else?

A. I might buy 5000 bushels of May wheat of you at 78 cents; sell it to Mr. Robbins at the same price; I would go to you and ask you if you would put that down to Mr. Robbins at 78 cents instead of myself. If it was agreeable to you you would do so, if not, you would not.

Q. Well, suppose it is agreeable.

A. All right sir. Then you substitute Mr. Robbins for me in that transaction.

Q. Then what do you put down in that transaction on your trading card?

A. Why, put down both sides of the card, 5000 bought of A. B. Jenks, maybe, at 78 cents; sold to Mr. Robbins at 78.

Q. Then you do carry that through your books?

A. Why, sometimes, yes, and sometimes no, just as the case may be. Not necessarily always.

Q. Do you pay a revenue stamp on that transaction? Do you stamp that?

911 Mr. Robbins: I object to that as immaterial.

Mr. Jenks: What is the object of transferring that deal on your part, having it transferred by me from you to Mr. Robbins?

A. It simply saves—the amount of it is that it simply saves me having an open trade at the same price on both sides.

Q. And it saves revenue stamps, don't it?

A. Not necessarily.

Q. Well as a matter of practice down there, it does save the revenue stamps, don't it?

Mr. Robbins: Objected to. I will have the Master rule on that.

Mr. Jenks: Well, I will skip that question.

Q. Mr. McHenry, in what form are the delivery notices in use on the Board of Trade compared with the paper I now hand you? (Handing witness a paper.)

A. I think that is the form that is in use, Mr. Jenks.

Mr. Jenks: I offer that notice as defendant's Exhibit 6.

(Thereupon said paper was admitted in evidence and marked Defendant's Exhibit 6, and is in words and figures as follows, to wit:

912

This notice is deliverable on contracts in the Exchange Hall between the hours of 1:30 and 2:00 o'clock P. M.; on the first business day of the month between the hours of 8:30 and 9:15 o'clock A. M.; and on days when the Board adjourns at 12:00 M., between the hours of 12:15 and 12:45 o'clock P. M. In the case of deliveries between 1:30 and 2:00 o'clock P. M., it shall be the duty of the party regularly holding this notice at 2:00 o'clock P. M. to present the same at the office of its issuer before 2:30 o'clock P. M. and in the case of deliveries between 8:30 and 9:15 o'clock A. M., said notice must be presented at the office of its issuer before 11:00 o'clock A. M.; and in case of deliveries between 12:15 and 12:45 o'clock P. M. it shall be presented at the office of its issuer before 1:15 o'clock P. M.

No.———— DELIVERY NOTICE.

Office of————————————————

Chicago————————190—

We have on hand ready for delivery, the following described Warehouse Receipts and hereby make tender to you of the same, in fulfillment of our contract of sale to you of

————————————————at ——

.....

Date	Warehouse.	Quantity		Storage.	
		Bushels.	Lbs.	Cts.	Amount.
E. & O. E.					

On the reverse side appears the following:

913 DELIVERED

To Time.

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914 Q. Now will you look at defendant's exhibit No. 6 Mr. McHenry and read it as if the blank was filled up by you for the delivery of a five thousand bushel warehouse receipt.

A. Just a moment. I don't think it is necessary to lumber up the record with this. You don't care anything about me reading any of the printed notice at the top?

Q. Just fill in the blanks.

A. Just the same as though this was filled out. "Office of W. E. McHenry, 320 Royal Insurance Building, Chicago, December 3rd, 1901. Mr. A. B. Jenks. We have on hand ready for delivery the following described warehouse receipts and hereby make tender to you of the same, in fulfillment of our contract of sale to you of November 25th, 1901." Follows a description of the warehouse receipts.

Mr. Robbins: What about after "at?"

A. "At," there is a blank, "sold to you at." Well sold to you I should have put in there previous to that, 5000 bushels of December wheat at 73 cents.

Mr. Jenks: Well then, you send it?

A. Well, no, I am not through with it yet, Mr. Jenks. I am not through with it yet.

Q. Go ahead.

A. Date of the warehouse receipt, November 30th, 1901; Warehouse, Armour & Company C. Quantity 5000 bushels no pounds; 73 cents, $3650." I believe that is right.

Q. Signed? A. Signed W. E. McHenry.

Q. Suppose after you made out that notice, you delivered it to your clerk and he came upon the Board of Trade, found me there and delivered the notice to me. I find somebody else there who has bought the same quantity from me and I wanted to give him that notice, what would I put on the back according to the custom of the Board of Trade?

A. There is a printed word at the top "Delivery." On the left of that in the other corner, "To," and on the right as you look at it, "Time."

Q. Well, now suppose— A. Well, I am describing it.

Q. Suppose I had sold to Robbins, what would I put there?

A. To E. B. Robbins, I guess I have got the initials
915 wrong, Mr. Robbins?

Mr. Robbins: That is all right.

A. It don't make any difference, for example, "At 73 1-4, time, 8:45 A. M."

Mr. Jenks: Then suppose Robbins wanted to deliver that to Hill who stood right by him, what would Robbins put on?

A. Do you want I should go down all these columns, Mr. Jenks?

Q. Yes, for two or three.

A. To John Hill, at 73 1-2, for example and the time.

Q. Suppose Hill had sold it to Mr. Shea and he wanted to deliver it to him? A. You mean the policeman?

Q. Yes? A. To John Shea?

Q. Yes, John Shea. A. At 74 and the time.

Q. What?

Q. And the time, it would be the same thing all the way down there, whatever it was.

Q. Now so far my name is not on the back of it?

A. Yes, sir—no, not on the back of it.

Q. Not on the back of it? A. No sir.

Q. Well we will say that John Shea could not get rid of it up there on the floor, John Shea has got the notice, the actual possession of it, has he? A. Yes sir.

Q. It is delivered to him and he has it there on the floor. Now you have the warehouse receipt? A. Yes sir.

Q. Nobody down to the time John Shea gets this notice has paid anything for this wheat. John Shea gets the notice, and then according to the practice of the Board, what does he do?

A. He comes to my office with this delivery notice.
Q. Yes. A. With a certified check.
Q. For how much? A. For the—for $3700—$3650.
Q. That is the amount that you had the wheat sold for?
A. Originally.
Q. Yes he has a certified check for that amount which
916 is due you? A. Yes sir.
Q. He gives you that check, you give him the warehouse receipt? A. Yes sir.
Q. Now that is a delivery of the stuff, isn't it? A. Yes sir.
Q. From you to John Shea? A. Yes sir.
Q. Now what becomes of the notice?
A. The warehouse receipts are pinned to this notice.
Q. Or this notice pinned to the warehouse receipt?
A. Either way, put it either way you choose.
Q. Yes.
A. And he takes this more as a voucher or as a bill.
Q. As a voucher for what?
A. For 5000 bushels of Number 2 wheat.
Q. Well, now we will suppose this—what was the amount that you supposed you had sold that wheat for? A. $3650.
Q. Well, then we will say that you had sold it to me for $3650; I to Mr. Robbins for $3700; Robbins to Hill for $3750, Hill to Shea for $3800. Now when you deliver that warehouse receipt you get nearly the commission that is coming to you?
A. Yes, sir.
Q. Where do I come out, where do I get my money? Where does Robbins get his, and where does Hill get his?
A. That is all arranged through the Board of Trade clearing house.
Q. How?
A. By taking the delivery price for the day and each one of the parties in interest in this contract paying or receiving from that delivery price.
Q. Which is the difference?
A. Yes sir, the parties in interest between myself and John Shea.
Q. And the parties between you and John Shea in that transaction, the way we have put it, get no wheat at all?
A. No sir.
Q. And they pay for no wheat at all?
A. They get this notice and deliver this notice.
Q. They [They] get a notice delivering it, but they
917 get no wheat and they pay for no wheat, is that it?
A. No sir.
Q. Well, that ain't it? A. Well, you asked me—

Q. You don't answer right. They get no wheat and they pay for no wheat? A. Well, what did I say there.
Q. You said no sir. A. Well—
Q. But that is though, that is the fact about it, ain't it, that they don't get any wheat and don't pay for any wheat?
A. The parties between myself and John Shea, as illustrated in this case, get no actual warehouse receipts.
Q. And get no wheat? A. And get no wheat.
Q. And pay for no wheat? A. And pay for no wheat.
Q. That is right?
A. I think this delivery notice is clear, and is a delivery of wheat, because anybody in between myself and John Shea can come to my office and stop and go over there and get the wheat; it don't necessarily stop at John Shea.
Q. No, unless the notice stops with them.
A. I say, the notice may stop with them.
Q. Certainly it may do that, but in the case we put, it didn't did it?
A. I say I want to make that clear. The notice may stop anywhere. It may stop with A. B. Jenks, it may stop with the next party; it may stop with the next party.
Q. It may go through a dozen different hands?
A. Yes sir, undoubtedly.
Q. And if it does go through a dozen different hands, then there are ten of those people who get no wheat and pay for no wheat that is right, isn't it? A. That is right, yes sir.
Q. Although on the Board of Trade that notice is called a delivery? A. Yes sir.
Q. It is a misnomer there, isn't it? A. (No answer.)
Q. Mr. McHenry, did you trade previous to this month on the Board in the December option? A. Yes sir.
Q. How extensively?

Mr. Robbins: That is after the commencement of
918 this suit isn't it? This witness testified that for two years, or for two years and a half before June 1st, 1901, he was not in business on the Board of Trade, but was working for the Government. I object to the question.

Which objection was overruled by the Master.

Mr. Jenks: How extensively, Mr. McHenry?
A. I should say since I started in business, June 1st, 1901, although I can't state the date that I commenced trading in wheat for December delivery, I have bought 500,000 and sold 500,000.
Q. That is— A. Wheat.
Q. Do you mean to say that that is exactly what you have done?

A. Why I can't—I would not swear to the bushel but in round numbers, I should say that.

Q. When would you say you commenced a deal in the December option?

A. I could not answer that question, Mr. Jenks, without a reference to my books.

Q. You can tell by referring to them? A. Yes sir.

Q. How many books would you have to refer to? A. One.

Q. What do you call that book?

A. That is what is called the option book.

Q. Is it a large book? A. Mine is not, no sir.

Q. Is it inconvenient to carry it? A. No sir.

Q. Would you just as leave bring it here?

A. Just as leave bring it here, although it is in constant use in my office. I will take it off for you and testify to the exact amount and the time that I commenced trading in it, if that would answer every purpose for you.

Q. Did you commence trading in the December options at the same time that other people did on the Board?

A. I should presume about the same time.

Q. Were you trading there for your customers?

A. Yes sir.

Q. Is your business now purely commission?

A. Brokerage and commission, and I will explain
919 what I mean by brokerage business.

Q. You have done that?

A. I think I did already.

Q. Yes. Now are both classes contained on this option book? A. The commission business entirely.

Q. Then you would say that for the December option you bought for your customers 500,000 bushels of grain?

A. Yes sir, at least that.

Q. How much did you sell for your customers for the same option?

A. Same amount, whatever amount it is. On the first day of December, first or second day of December, rather the second day of December, I think my books are just even on December wheat, the same amount bought and hold.

Q. Have you any deals open for December wheat on the first day of December?

A. Well, the first day was Sunday, better make it the second.

Q. On the second day of December?

A. Yes, I had ten thousand bushels coming and ten thousand bushels going.

Q. Out of the 500,000? A. Yes sir.

Q. What was done with that ten thousand?

A. That was delivered to me and I delivered it out.

Q. But you did not pay for it? A. No sir.

Q. It was delivered to you by a notice in the way you have described, and the notice was passed right over by you to somebody else? A. Yes sir.

Q. Well, was not that a pretty large average of deliveries for the amount dealt in, ten thousand bushels in 500,000?

Mr. Robbins: I object to that.

Mr. Jenks: Wasn't that a good deal larger than you generally get stuck on on the Board on delivery day?

The Master: He may answer.

A. It is very much smaller.

Mr. Jenks: Very much smaller?

A. Yes sir, I ordinarily have a good deal more open than that.

Q. You were pretty clear then, weren't you?

920 A. Very fortunate this time, yes sir.

Q. Now, lets see. You had 10,000 bushels bought for a customer and you had 10,000 bushels sold for a customer?

A. Yes sir.

Q. On the second day of December? A. Yes sir.

Q. Now how much wheat did you take in from that customer that you had it sold for?

A. I don't quite gather the drift of that question, Mr. Jenks?

Q. You say that on the second day of December, you had two customers, you had ten thousand sold for one, and ten thousand bought for other?

A. No sir; what I said was this; that on the second day of December my books were just even on December wheat, the same amount bought and the same amount sold, consequently, I had nothing open for a customer on either one side or the other.

Q. Nothing open? A. For a customer, no sir.

Q. How long had these deals for customers been closed out on the second day of December?

A. I could not answer that. I was trading in December wheat all the time from the first time they commenced to trade in it, and stood by from day to day, people buying and selling continually.

Q. And then when the second day of December came you had no transactions for your customers? A. No sir.

Q. But you had as principal, with some member of the Board of Trade, a 10,000 bushel lot coming to you and a 10,000 bushel lot going from you to another member of the Board?

A. Two 5,000 bushel lots, to be exactly correct, going out.

Q. I thought you stated you did not know who actually delivered to you upon notice?

A. I stated I did know; that is I know from information, from my settling clerk.

Q. Yes, who was it? A. Logan & Bryan.

Mr. Robbins: You have been all over that.

The Witness: I think I went all over that, Mr. Jenks.

Cross-Examination

By Mr. Robbins:

921 Q. You have testified that these delivery notices were sent around as provided by the rules. You mean by that, the rules of the Board of Trade of the City of Chicago?

A. Yes sir.

Q. Has the Board of Trade regular published rules, adopted by it for the government of its business and its members?

A. Yes sir.

Q. Does it issue a book containing those rules, from time to time? A. Yes sir.

Q. Is the book I now hand you such book? (Handing witness a book.)

A. These are the rules, by-laws and regulations—

Q. Just answer the question.

A. Yes sir, in force June 1st 1901, this is the latest one that I know anything of.

Q. Were those rules in force June 15th, 1901, as well as June 1st?

A. Well this was June 19th and we usually changed them with the permission of the—

Q. Well, were those rules in force June 15th? A. Yes sir.

Q. And June 1st, 1901? A. As far as I know, yes sir.

Q. Will you turn to the rule or rules that you refer to, as controlling this kind of delivery.

Mr. Jenks: I object to that.

The Master: You may turn to it.

Mr. Jenks: I object to a member of the Board of Trade refreshing his recollection as to what the rules are by referring to this rule. I have proved by him what the customs and practices are up there; now the rules themselves ought not to be handed to the witness for the purpose of refreshing his recollection about anything.

The Master: I don't know yet what the purpose is.

Mr. Jenks: When we find that out we will have some further objections.

Mr. Robbins: I can find it for you, I guess.

A. Here it is. Page 35, I think. I am not as familiar
922 with them as I might be in detail.

Q. What clauses of the rules are those that cover this kind of delivery?

Mr. Jenks: I object, the rules themselves show that.

The Master: Overruled. This is preliminary. You may answer.

A. Rule 21, section one, section two,—section one and section two, I think of Rule 21. I think that ends all of the—

Mr. Jenks: You will have to study over them now to see whether it does or not.

A. I think it ends here, I think the deliveries end here as far as that is concerned.

Mr. Jenks: I can read that as well as the witness can.

Mr. Robbins: Now I will offer in evidence, Section one and two of Rule 21, and ask that the witness read the rule into the record.

Mr. Jenks: Now, I object to that as it does not pertain to a proper cross examination of what was called out on the direct examination of this witness, and I will state to the gentleman, that I have not the slightest objection, at the proper time, and in the proper place, to have these entire rules offered in evidence here, but in the cross-examination of this witness I object to them.

Mr. Robbins: The witness testified that this was done as provided by the rules. Now I have a right to ask him what the rules are.

Mr. Jenks: The witness is asked to pick out those rules which he says—which the witness says apply to this thing, to the exclusion of all the other rules of the Board.

The Master: I think that latter is a better objection.

Mr. Robbins: I don't have to introduce all the rules of the Board. I have tried a good many of these cases and I never knew where I was required to introduce all the rules of the Board.

923 The Master: You can introduce one or more rules, but I don't think this witness could be permitted to say that this particular rule is the rule which controls his particular transaction on the Board and that no other does.

Mr. Robbins: He don't say that, he don't say that. He referred to certain rules. I have asked him if those are the rules he referred to and he says these are the rules. Now I ask to introduce those rules in evidence.

Mr. Jenks: You ask him to. Now I say that the witness on the stand has no right to introduce them, and I say to you

that if you offer any rule of the Board I have the right to insist that you introduce all of the rules before you can get in one, and I say to you further now, we will test the bona fides of the complainant in this case; I will ask you to offer the entire rules of the Board of Trade in this case and you read out of them what you want, and we will read out of them what we want.

Mr. Robbins: I won't offer all the rules, because they are too voluminous and would enlarge this record.

Mr. Jenks: Well, I will offer them all when we come to it.

Mr. Robbins: I will agree at this time and as a part of the cross-examination of this witness that all such rules of the Board of Trade as there may [—] that I think material to this case, may be written into the record.

Mr. Jenks: I object to your offering them in the cross-examination of this witness and as a part of the cross-examination, but I repeat again that for the purpose of testing the fairness of the complainant in this case, I will not object to your introducing all of the rules of the Board of Trade and that entire book as it is, with the right on the part of each party to pick out of that book what he wants to use and to use it on the hearing.

Mr. Robbins: Well I have nothing more to say about
924 that. I will ask that the rules that are there, if he insists on all the rules going in, I can't help it, I can't offer all the rules.

Mr. Jenks: Then we object to introducing any.

Mr. Robbins: I consent that such of the rules that he wants to pick out and such of the rules that I want to pick out, may be introduced in evidence now, but I submit that the rules that this witness refers to in his direct examination may be introduced now, so that I can cross-examine him upon them.

The Master: I don't see that you are very far apart, Mr. Jenks. I think that that comes pretty nearly your proposition Mr. Jenks. Either of you two to select such rules as you wish and read them at such time as you wish.

Mr. Jenks: I will accept that proposition if Mr. Robbins will now select and name the rules that he wants to introduce.

Mr. Robbins: I think I can do that, subject to any correction afterwards. Now these are to be written right in at this point?

Mr. Jenks: No we introduce the book.

Mr. Jenks: Because I want to cross-examine the witness on the state of the rule.

The Master: Well, you can designate the rule by number and then cross-examine on them, and then let the stenographer later copy them form this book.

Mr. Jenks: I don't want to take anybody by surprise. If you select those that you want in, we will take the rest of the book. That is our part.

The Master: You put it in as a part of your record?

Mr. Robbins: You will be responsible for what you put in?

Mr. Jenks: I will put in the books themselves, and I won't write it over in the record.

The Master: I think you understand, gentlemen, that
925 Mr. Robbins will announce by letter and number the rules that he wishes and the stenographers can write them up without reading them.

Mr. Jenks: It won't be necessary to have them written up. They are right there printed in those books and we can get a number of them.

Mr. Robbins: I want to reserve this right, if Mr. Jenks is going to offer any of these rules that have no bearing on this case, I shall object to them and have the Master pass on that.

Mr. Jenks: Then I shall object to your introducing any of them.

Mr. Robbins: He may do the same thing.

Mr. Jenks: Just wait a minute. I want to know whether this proposition of Mr. Robbins made a moment ago is made in good faith or not?

Mr. Robbins: Yes.

Mr. Jenks: Very well, then you put in what you want and we will put in the rest of them.

The Master: You will take the responsibility of the—of the record of them?

Mr. Jenks: Yes.

The Master: I guess that is all right.

Mr. Robbins: I want my objection to all of the rules that are not material.

The Master: The objection may be in certainly, and the court will pass upon it, the court at Cincinnati.

Mr. Jenks: Now, there is no use of reading in this record a copy of those rules.

Mr. Robbins: I insist on that.

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Mr. Jenks: Because we can put the book just as it is as an exhibit and we can get a number of copies of them; we have them now. There is no use of increasing the expense; if this gentleman wants to be fair, if he is not afraid of the
926 rules of the Board of Trade, we will have them all in.

Mr. Robbins: I will state—

The Master: I think you are together, gentlemen. The Judge will pass upon the question of costs I imagine later. Now, Mr. Robbins, you may proceed.

Mr. Robbins: Let me understand; Mr. Jenks now offers all the rules of the Board of Trade?

The Master: I understand him that way now.

Mr. Jenks: Yes, that entire book.

Mr. Robbins: And I object.

The Master: I don't understand that it has gotten that far yet, Mr. Robbins.

Mr. Robbins: I will offer the rules I am going to offer.

The Master: The agreement is that either side may offer any of the rules in that book.

Mr. Robbins: With the right of either party to object to materiality.

The Master: That is to be passed upon by the court down there. I will not sustain the objection.

Mr. Jenks: I don't want the Master to limit us.

The Master: I shall not limit you.

Mr. Jenks: That book on the outside is marked, "Rules of the Board of Trade."

The Master: If you will listen, Mr. Jenks, I intend to let it go in. He has the right to such portions as he desires; you to offer the rest. He objects to the portions you offer as immaterial, and I will overrule his objections and the court down there will pass upon it.

Mr. Jenks: Well, all right.

The Master: He can mention anything now.

Mr. Jenks: The charter is in there and the object of the Board of Trade as they have defined them, and the rules. That whole thing I want in, as coming from the Board of Trade.

Mr. Robbins: I offer in evidence, of the rules of the
927 Board of Trade, referred to by Mr. McHenry, Rule 4, Section 8, Section 9, Section 11. Rule 16, Sections 1 and 3. Rule 21, Sections 1 and 2. Rule 22, Section 2, Sections 6, 7, 8, 9, 10 and 12. Rule 23, Sections 1 and 2.

Mr. Jenks: I object to the introduction of those rules and those parts of rules referred to by Mr. Robbins unless the whole of the rules of the Board of Trade be offered in evidence, and under the stipulation a few moments ago entered into on the part of Mr. Robbins, I offer that whole book, from which he read, and which is entitled on the back, "Acts of Incorporation, Rules, By-laws and Regulations of the Board of Trade of the City of Chicago." Also Rules governing the inspection of grain in force June 19, 1901." and I ask that the whole book and the contents of it be marked as Defendant's Exhibit 7, December 3, 1901. Do you object to its being marked? Have you one that is not marked? I have another one then that we will use that is not marked at all.

Mr. Harkless: Mr. Robbins, can it be further agreed that any copies of these same rules may be used, whether marked Exhibit 7 or not?

Mr. Robbins: Have you got one of the same date, Mr. Jenks?

Mr. Jenks: Yes.

Mr. Harkless: What do you say about that, Mr. Robbins, Supposing we wanted a dozen to use in this case, why not agree that any of the same—

Mr. Robbins: I think we had better identify them.

Mr. Jenks: They are all alike, aren't they?

Mr. Harkless: You haven't a lot of them running around, have you?

Mr. Robbins: I think there ought to be one copy identified.

Mr. Harkless: Yes, but what about the others?

Mr. Robbins: We don't need but one copy.

Mr. Harkless: You don't, but we can't all use one
928 copy of the rules.

Mr. Robbins: You can have copies to use, but you can only have one in the evdience. You have one of June 19th.

Mr. Jenks: The one that I have has the certificate of the Secretary. I would rather put in another one; this seems to be the only one I have here.

Mr. Robbins: I can get another one. This does not seem to be a very clean copy, that is all. Now read what you have got there.

And thereupon the objection by Mr. Jenks to the offer of Mr. Robbins and Mr. Jenks's offer were read.

Mr. Robbins: I object to the evidence upon the ground that the book contains in addition to the rules of the Board of Trade, the by-laws, regulations for inspection and other provisions that form no part of the rules and are in no way material to the issues in this case. I also object to the introduction of all the rules because the offer is too general and many of the rules are not relevant to the issues in this case. Now that objection I understand the Master, it is going to be overruled and it is going to be introduced in evidence.

Which objection was overruled by the Master.

Q. What was the occasion, Mr. McHenry, of the adoption of this system of delivery by notice that is provided for by these rules? Is it not because the system of delivery by taking the warehouse receipts from one office to another involved the running by messengers from office to office, through the crowded streets, and the danger of loss of receipts, and the inconvenience resulting from the attempts of different members of the Board to deliver property at the same time?

A. That was the reason for the adoption of the present system.

Q. Describe how deliveries were made before those rules were adopted?

929 A. Persons employed by the different firms would take property around to the different offices of members,

in many cases, simply throw it in through a window without saying what it was or anything about it; the most careless way in the world; but they were delivered from office to office, everything.

Q. Did it result in any loss of receipts or evidences of title?

A. Yes sir.

Q. Did it have anything to do with the adoption of the present system? A. Yes sir.

Q. It was the adoption of the present system? A. It was.

Q. Was this system of settlement by offsets that you have explained in your direct evidence, a system carried on in conformity to the rules of the Board of Trade,—wait a minute until I get the rules.

Mr. Jenks: That will be incompetent when you get at it in the form of a question.

(Question read.)

Mr. Robbins: Was it the system provided by Section 6, 7, 8 and 9 of Rule 22, of the Board of Trade?

Mr. Jenks: That is objected to as not a proper cross-examination and calling for the conclusion of this witness.

The Master: Sustained.

Mr. Robbins: The witness stated and kept saying, "As provided by the rules." Now I ask him if it was in accordance with these specific rules that these settlements were made?

Mr. Jenks: Same objection.

The Master: Oh, I think he put that in as a sort of make shift; he also gave the facts.

Mr. Robbins: He also supplemented it many times: "As the rules provided."

Mr. Jenks: Even that does not make that question competent.

Mr. Robbins: Now let us see. Here the rules provided a certain way of settlement which is described, a certain line of settlement. I ask if the settlement that he has described
930 is the same settlement that the rules prescribe.

Mr. Jenks: That is calling for the conclusion of the witness.

The Master: You may ask him if the rule he referred to is that particular rule; the other I don't think is competent.

Mr. Robbins: Haven't I the right to test the accuracy of this statement as to what it was and find out about it and cross-examine and ask him?

Mr. Jenks: You have a right to ask for the facts.

Mr. Robbins: Wait a minute please.

Mr. Jenks: But not to compare with something else.

Mr. Robbins: I have asked him whether the system of settlements that he has described is or is not the same system of settlements as described in these particular rules.

Mr. Jenks: That is just what I objected to, and what the Master has ruled upon.

Mr. Robbins: Were these settlements that you have described here, settlement that were made under the rules of the Board of Trade or different from the rules of the Board of Trade?

Mr. Jenks: I object to that. That is the same thing in different words.

The Master: As I remember it, he went into details; told the facts how it actually happened. Now I guess you will be able to show whether or not it was done in accordance with the rules, if you are introducing the rules.

Q. Mr. Robbins: Are you familiar with the rules in reference to offsets and settlements? A. Fairly so.

Q. Will you look at these rules and state wherein the system of settlements that you have described on your direct examination, differed from the system of settlements which is described in these rules?

Mr. Jenks: I object to that. That is the same thing you had before in a different shape.

Mr. Robbins: That is what you had. You asked as to that.

931 Mr. Jenks: The rules speak for themselves. His descriptions of the settlements shows whether the settlements were made in accordance with those rules. Now we don't want the conclusion of the witness.

The Master: I think as far as you can go, Mr. Robbins, is to have him identify the rules he referred to and then the rules being in as evidence those rules can be compared. I don't think it would be competent for the witness himself to say.

Mr. Robbins: Is that question objected to?

Mr. Jenks:

Mr. Robbins: You stated upon your direct examination, did you not, that settlements were made as provided by the rules of the Board of Trade? A. Yes sir.

Q. Now what rules did you refer to in saying that the settlements were made as provided by the rules of the Board of Trade? A. All the rules bearing upon that subject.

Q. Can you specify the rules?

A. Sections 1, 2,—hold on, I will strike out that Section 2. That is deliveries. You are referring now entirely to the settlements, are you not, Mr. Robbins?

Mr. Robbins: Yes, I think it starts with six.

Mr. Jenks: No, no, you are asking the witness to point out the rules which he refers to in direct testimony. Those are what you are to point out and not to point out what you may be able to find in that book at present.

Mr. Robbins: Don't state your impressions, Mr. Jenks; I am carrying on this examination.

The Master: I suggest, Mr. Robbins, will it take much longer to cross-examine this witness?

Mr. Robbins: I don't know. I generally keep on until I get his evidence in.

The Witness: Well, strike out that Sections 1 and 2, I am wrong about that.

The Master: We will finish up with this question.

932 Mr. Jenks: Don't strike out anything.

A. Section 6 of rule 22,—Section 7,—no, section 8 of the same rule. I think that covers all the sections of this rule relative to the settlements I have referred to, as provided by the rules of the Board. I might have skipped some of them possibly. Section 9, section 9 also.

Mr. Robbins: Are settlements ever made except where both parties to the trade consent?

A. All parties to the settlement must consent.

Q. Before there can be any settlement? A. Yes sir.

Mr. Robbins: Well, we will stop here.

And thereupon, at 4:45 P. M. an adjournment was taken to 10:00 o'clock A. M. of the next day, December 4th, 1901.

10:00 o'clock A. M. December 4th, 1901, parties met pursuant to adjournment.

Mr. Robbins: It is agreed by both sides that these rules were in force from and after the first day of June, 1901. (Referring to rules of the Board of Trade heretofore introduced in evidence but not marked.)

Thereupon said book of rules was admitted in evidence and marked Defendant's Exhibit 8 and is in words and figures following:

933 Mr. Robbins: Prior to, not saying how long prior to, but prior to and since.

Mr. Jenks: No, it is the prior to that that I want to limit. That don't go.

Mr. Robbins: If you want to prove that those rules were not in force before June 1st, I won't stand for that.

The Master: Have you a witness here, Mr. Jenks?

Mr. Jenks: No, I don't seem to; I have subpoenaed some.

Mr. Robbins: Mr. Master, there is a question that has arisen, Mr. Jenks offers this in evidence. You will see it says, "In force, June 19, 1901, that is after the filing of this bill.

The Master: Well, the gentleman testified that it was in force the first of June, or fifth.

Mr. Robbins: No, my rules. He testified to certain rules and we stipulated that those rules were in force some time prior to and since the first of June, 1901. Now, that is the fact.

Mr. Jenks: It depends on how long prior to, you say?

Mr. Robbins: I don't care.

The Master: Well, you say six months. I presume from June to January is the way you print them.

Mr. Robbins: The idea is that the rules were revised, I think in March or April, 1900.

934 The Master: During all the year 1900, is that satisfactory?

Mr. Jenks: That is all right.

The Master: That will include before and since.

William S. Crosby, produced as a witness on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks and testified as follows:

Mr. Jenks: Mr. Crosby, where do you live? A. Chicago.

Q. How long have you lived in Chicago?

A. Thirty-six years,—thirty-five years.

Q. What is your business?

A. Well, I am in the Grain and Stock business, Commission business.

Q. How long have you been in Chicago?

A. How long have I been in Chicago?

Q. Yes? A. Thirty-five years.

Q. In that business?

A. Well, I have been in that business ever since I came to Chicago.

Q. With whom have you been connected in business during that time?

A. Well, I worked for two or three different Commission houses many years ago and then for about fifteen years I was in business for myself.

Q. In what kind of business for yourself, commission business? A. Commission business, yes, sir.

Q. During what time were you in the commission business for yourself? A. Well, from 1873 to 1887.

Q. During that time were you a member of the Board of Trade of the City of Chicago? A. Yes sir.

935 Q. Are you still a member of that Board?
A. Yes sir.
Q. And how long have you been a member of the Board?
A. I think thirty years.
Q. How extensive was your commission business?
A. Well, I had one of the largest commission houses on the Board at that time.
Q. Amounting to how much in purchases and sales per day, week, month or year? A. Oh, I could not tell you.
Q. Can you make any sort of estimate?
A. No, it varied very greatly with the conditions of the market; sometimes the commission would be quite large for a day or week or month and sometimes pretty small.
Q. What do you mean by quite large?
A. Well, it ran up to purchases and sales of grain for instance, it ran up into a million bushels a day, sometimes. Sometimes it would not be over a hundred thousand, it varied.
Q. How many other members of the Board of Trade at that time were engaged in the same kind of business that you were?
A. Commission business?
Q. Yes?
A. Oh, I don't know; I suppose about—it would be the roughest kind of a guess, I never counted them up and I don't know anything about it; I suppose out of seventeen or eighteen hundred members there were commission houses operating on the floor maybe 250.
Q. Wouldn't it be larger than that?
A. Well, it might; I am simply making a rough estimate because I never thought about it and I don't—
Q. Compared with members of the clearing house how many were they? A. In those days?
936 Q. Well, since the clearing house, do you know when that was organized?
A. Well, I forget the exact date of it, I don't remember. Well, they are a very small proportion of the members of the Board who qualify as members of the clearing house and clear their trades through the clearing house in their own name, a very small percentage.
Q. A very small percentage of the dealers on the floor who are members of the Board of Trade are members of the clearing house, is that it?
A. What do you mean by dealers on the floor?
Q. Members of the Board of Trade who are active dealers there?
A. Well, I don't know what you mean by dealers; you see there are a great many members—
Q. Or doing business?

A. There are a great many members of the Board of trade who are in the employ of other firms and whatever trading they do is cleared through the firm that they trade for, and there are a great many members who are brokers who never clear their trades. If you mean commission houses—

Q. Yes?

A. How many commission houses are—what proportion are?

Q. Doing business on the Board who are not members of the clearing house?

A. Why I should think those who are doing business in grain and provisions, a very small number of them who are not members of the clearing house.

Q. But the members of the clearing house, are they usually men who are doing a commission business?

A. Well, a great many of them are; there are a great many traders on the floor who trade simply for themselves; some of those clear their own trades and some do not.

Q. Do you remember about how much business yours would average the last year you were in busines for yourself?

937 A. No, I could not state, I haven't the slightest idea. I know about what my commissions were, and that is all I do know as to what the volume of business was in bushels or barrels or tierces, I don't know.

Q. As a commission man, while you were in business for yourself in what did you usually deal on the floor of the Board, grain or provision? A. Both

Q. Which was the largest? A. Grain or provisions?

Q. Yes.

A. Why, I think I did more business in grain than I did in provisions.

Q. And in grain, what kind of grain would be the largest amount that you dealt in? A. Wheat.

Q. Take the wheat deals, how extensive were your transactions in wheat per day? A. I could not tell you.

Q. Week, month or year?

A. I don't know, I could not tell what the average would be; I suppose they would average in busy days in wheat—my trade at that time would probably have been three or four hundred thousand bushels a day, maybe a half a million a day.

Q. On an average? A. Possibly, yes.

Q. Previous to the time you were in business for yourself as a commission man, you were working for some other houses?

A. Yes.

Q. Can you give the names of those houses?

A. Well, I worked for William Young & Company, Curtis Brothers & Company, E. W. Mitchell & Company.

Q. In what capacity did you work for them?

Mr. Robbins, wait a minute, when did you first begin to have a firm of your own? A. '73.

Mr. Robbins: Well, I object.

The Witness: The spring of '74.

Mr. Robbins: I submit that the evidence back in '73 is too remote.

938 Mr. Jenks: Q. In what capacity did you work for them?

Mr. Robbins: Evidence back of '92 is not competent.

The Master: Did you work for them before '73, is that your answer?

A. Yes sir.

The Master: You may answer this last question, in what capacity?

A. Well, for E. W. Mitchell,—for E. W. Mitchell and Company and Curtis Brothers & Company I was bookkeeper and cashier, and for William Young & Company I traded for them on the floor and did their correspondence.

Mr. Jenks: Do you know what kind of business they did and in what manner their business was transacted.

Mr. Robbins: Objected to.

The Master: You may answer that yes or no?

A. In a general way, yes.

Mr. Jenks: How did their business compare with yours while you were in business for yourself as to the kind of business and the manner in which it was transacted?

Mr. Robbins: Objected to.

The Master: Isn't there an allegation in the answer that for thirty years last past, it has been the same?

Mr. Jenks: Yes, I am covering the whole period.

Mr. Robbins: The averment is that they have distributed the quotations.

Mr. Jenks: I am covering the whole time and I will go back to that as to the quotations too.

The Master: I think you have that allegation in the answer.

Mr. Robbins: There is no such allegation in there. The only thirty year business applies to the question of quotations.

The Master: And the method of conducting business on the Board of Trade.

939 Mr. Robbins: No.

The Master: Have you got a copy of the answer here?

Mr. Robbins: No, have you gentlemen got one, I haven't it.
The Master: More than thirty years last past as I remember it.

(Question read.)

The Master: Objection overruled.

Mr. Jenks: Q. Just as to the kind of business and the manner in which it was transacted compared with what you did yourself? A. Very much the same.

Q. Since you ceased doing business for yourself with whom have you been connected?

A. Well, I was away from the Board of Trade for four or five years; when I went back I was a short time with Robert Lindblom a few months, and for the past five years I have been with F. G. Logan, and their successors in business, Logan & Bryan.

Q. What was Lindblom's business?

A. He was a commission man.

Q. How extensive was his business, a large one or a small one?

A. Well, moderate, just a moderate business at the time I was with him.

Q. Compared with the amount of business that you did while you were doing business for yourself, how was it?

A. Small.

Q. Larger or smaller? A. Smaller.

Q. Can you estimate how extensive his purchases and sales were from time to time? A. No.

Q. Can you make an estimate of the most extensive purchases and sales any one day that he had?

A. As a commission merchant?

Q. Yes.

A. Well, he had just re-entered business at the time I went with him and had not got started on any scale and his business was small.

940 Q. How was it with F. G. Logan & Company, what was their business?

A. They were commission merchants.

Q. Was their business extensive or small? A. Extensive.

Q. In what capacity have you been acting with F. G. Logan & Company?

A. Well, for a couple of years, three years I think I was—I had charge of their business on the floor of the Exchange, since then I have been manager of the office.

Q. Did F. G. Logan & Company do an extensive or small business in commissions? A. Very large business.

Q. Amounting to how much per day?

A. Well, I could not tell you, I don't know.

Q. Can't you form some idea as to the extent of their transactions in wheat?

A. It is like all business, the business of all commission houses: it varies very greatly dependent on the condition of the market. Some days the business is enormous and some days it is small.

Q. Well, the most extensive of their day's transactions, do you know how much that was?

A. Oh, seven or eight million bushels.

Q. A day? A. Yes.

Q. On an average per day how much do you think they did?

A. I could not tell you, I don't know.

Q. And do you know what their commissions have amounted to, not that I want to know what they amount to, but I want to see if we can get at the extent of their business from that?

A. No, I do not know.

Q. Yet you managed the office? A. Yes sir.

Q. Well, isn't there some way that you can make a pretty fair estimate of the extent of their business?

Mr. Robbins: You mean their business in grain or all their business in stocks and every thing?

941 Mr. Jenks: No, I don't want the stocks, I merely want their transactions on the Chicago Board of Trade; that is all I care for?

A. Well, I could not make any intelligent estimate of what their average daily transactions on the Chicago Board of Trade would be; it varies so greatly from one day to another and from one period to another.

Q. But can't you make an estimate of different days in your own mind at the present time so as to [gave] us some idea what the extent of their business was in wheat?

A. I suppose their average trade in wheat might be a million bushels a day and perhaps more, I don't know.

Q. How about corn? A. Well, corn would be less.

Q. Amounting to how much?

A. It might average three or four or five hundred thousand bushels a day.

Q. And oats?

A. Well, that would be again less; I suppose their oat business would average a quarter of a million a day.

Q. Now take the dealing in wheat, an average of a million a day, for what length would you say that continued with F. G. Logan & Company?

A. Oh, I should say for an ordinary year, the last year or two the firm was in business that might have been the average for each business day of the year.

Q. When did your connection with the firm of F. G. Logan & Co. cease?

A. I don't know as it makes any difference, but I will correct you. The firm was F. G. Logan. It was not F. G. Logan & Company.

Q. Well, F. G. Logan, when did that cease?

A. Well, when the firm of F. G. Logan went out of business.

942 Q. When was that? A. Oh, it is a few months ago.

Q. A few months ago? A. Yes sir.

Q. You had been with F. G. Logan for about five years was it, you said?

A. Four years and a half, about, nearly five years.

Q. Did you know how F. G. Logan & Company conducted his business during the time that you were there?

A. His commission business?

Q. Yes sir? A. Yes, in a general way.

Q. And what I mean by that is, his business on the Chicago Board of Trade? A. Yes.

Q. And connected with his customers in deals that he had on the Chicago Board of Trade? A. Yes.

Q. How did his mode of doing business compare with the mode that you adopted in transacting your own business while you were doing it?

Mr. Robbins: Wait a minute, I object to that; I think that is calling for the witness' opinion as to the mode; he has not shown the mode of business of Mr. Crosby when he was doing business. He has not shown the mode of business of Logan, he simply says, how does one compare with the other.

The Master: Do you intend to show Logan's method of business and this gentleman's later?

Mr. Jenks: Yes sir.

The Master: And connect it?

Mr. Jenks: Yes sir.

The Master: Overruled.

943 (Question read.)

A. Well, except for the fact that we—that the firm of F. G. Logan has a large system of private wires, leased wires, it was much the same.

Mr. Jenks: Q. I mean on the Board of Trade on the floor of the Exchange room? A. Much the same.

Q. Now the last firm, the one that you are with now, what is the name of that firm? A. Logan & Bryan.

Q. Successors to the firm of— A. F. G. Logan.

Q. F. G. Logan? A. Yes.

Q. And they commenced business when?

A. In the last summer sometime, I forget the exact date.
Q. Are they doing a commission business? A. Yes.
Q. Do you know how they transact their business on the floor of the exchange room of the Board? A. Yes.
Q. Will you state whether it is conducted in substantially the same way that you conducted yours while you were in business for yourself? A. Yes.
Q. Mr. Crosby, in these different commission houses, have you in your own business as a commission man, for whom as a rule did you and do they conduct business, in other words, who are the customers as a class?
A. Well, come from all sources and classes.
Q. Come of all sorts and classes?
A. To classify the business generally, yes.
Q. In doing business the Chicago Board of Trade in these houses that you have been with, and your own houses where were and are the customers generally located, where do
944 they live; I want to know from what points in the country the business came? A. Well, every point.
Q. Extending where, give us some idea?
A. Well, you mean [by] own business or you mean the business of the firm I am connected with?
Q. What?
A. You mean [by] own business or the business of the firm I am with?
Q. Your own business and that of all the firms you have named with whom you have been connected?
A. Well, they came from pretty much every location, from the Atlantic to the Pacific, and the Gulf of Mexico.
Q. All over the Country? A. Yes.
Q. Mr. Crosby, will you state the mode of initiating a transaction that was executed or conducted on the floor of the Exchange room of the Board by you and the Commission houses with whom you have been connected for customers and when the first thing that is done in conducting that kind of business, commission business?
A. Well, the first thing is to get the order from the customer to buy or sell whatever he wishes to buy or sell.
Q. In what way is an order made and received?
A. Well, it may be by mail, it may be by telegraph, it may be by verbal message.
Q. If it is by wire, state if you can, what is usually upon the wire as to the order? A. What is usually on the wire?
Q. Yes, as to the order, what is on the order?
A. Oh, buy so much property or sell so much, according to certain terms, either made to Logan & Company as to price, or

it may be as to market price, it may be for immediate de-
945 livery, or it may be for future delivery.

Q. And upon receipt of such an order as that suppose you do not know the customer, in other words, you do not know that he is absolutely responsible, what is the next thing done after receiving the order?

A. Well, it depends upon the conservatism of the house whether they want to take chances on him or not; usually I should say they telegraph the man and ask him to place in some bank in his town enough money deposited to your credit to protect the transaction.

Q. And what do you call that, a margin?

A. That is the term usually applied to it, yes.

Q. Is there or has there been any limit to the margins required to be put up in advance?

A. I suppose each house has its own standard of margin.

Q. As a rule how much is required?

A. Oh, I don't know, it depends entirely upon the condition of the market and on the grain you are trading in, or the property you are trading in.

Q. You can give us some idea of about how the margins range that I require? A. On what?

Q. Wheat, say?

A. Well, I should suppose they would run all the way from ten to—from two cents to fifteen cents a bushel, depending on the conditions of the market.

Q. Then those margins are put up sometimes with the commission man, and sometimes they are deposited in a bank at the home of the customer to the credit of the commission men are they?

A. Yes, in either case they are in the control of the commission man and practically put up with him.

946 Q. Then the margins put up being satisfactory and the order received by the commission man, what does he do?

A. He goes on the floor of the exchange and buys or sells the property according to the order.

Q. Well, suppose that the order is to purchase and for future delivery, that is the way the most of them are in the commission? A. Yes sir.

Q. What per cent of them would you say are for future delivery? A. Of the transactions in grain on the floor?

Q. Yes those made by the commission men?

Mr. Robbins: You mean his firm?

Mr. Jenks: Q. That is, people that you have been connected with and your business what proportion would you say are deals in future?

A. Deals for future delivery you mean?
Q. Yes.
A. Purchases and sales of property to be delivered at some time in the future?
Q. Yes?
A Well, I should say that certainly 99 per cent of them are.
Q. At what place on the floor of the Exchange room were those orders executed?
A. It depends on what kind of property the order is.
Q. Wheat, take wheat?
A. It is executed in the wheat pit, what is called the wheat pit.
Q. Take corn? A. It is executed in the corn pit.
Q. Take provisions? A. In the provision pit.
Q. How many pits have been on the floor of the exchange room for the past eight or ten years, places that you call pits?
A. Well, there is—a pit derives its name from a
947 single edifice that is built there for the convenience of the traders to stand in so that they can see each other; there is three of those, but there is an oat crowd which has no pit. It is smaller crowd, and they don't need a pit, but they have a place where they trade that is equivalent to a pit.
Q. But which place has the largest crowd?
A. Usually in wheat.
Q. Will you describe the size of that wheat pit, it is octagonal in form is it not, on the floor? A. I think it is, yes.
Q. Now about how large is it in diameter?
A. I suppose it is thirty or forty feet wide, maybe more than that. The room is so large that its appearance would be deceptive.
Q. [How] how high is it?
A. Well, there are about three steps leading up to it, I should judge, on the outer edge about four feet.
Q. It is so formed that one standing there can look up and see the people who are at the pit, is it?
A. One standing where?
Q. Anywhere? A. On the Exchange floor?
Q. Is it elevated? A. It is elevated, yes.
Q. There are steps?
A. The outer edge is elevated and then there is a gradual slope to the center.
Q. So that people can look over the heads when standing in the center can look over the heads of those below?
A. No, one standing on the outer edge can look over the heads of those in front of him.
Q. Yes? A. Yes sir.

Q. And how many people as a rule are there trading
948 in that pit, give us some estimate of the number of that are usually there during business?

A. It depends on the activity of the market. Sometimes the pit is jammed full, and sometimes it is scarcely filled.

Q. Well when it is jammed full, how many people would you say were there?

A. I should say there might be 175 or 200.

Q. Are the people who are at the wheat pit, traders?

A. Some of them.

Q. As a rule, are the most of them traders? A. Yes.

Q. That is what they go there for, isn't it? A. Oh yes.

Q. Now after executing that order at the wheat pit, what is the next thing that is done about it?

A. Report the transaction to the member, the party for whom you make it.

Q. But first, before reporting it there is some record made of it by the two parties dealing together?

A. Oh, yes each party. The custom is that the trade has a card, a memorandum card on which he enters the trade as soon as it is made.

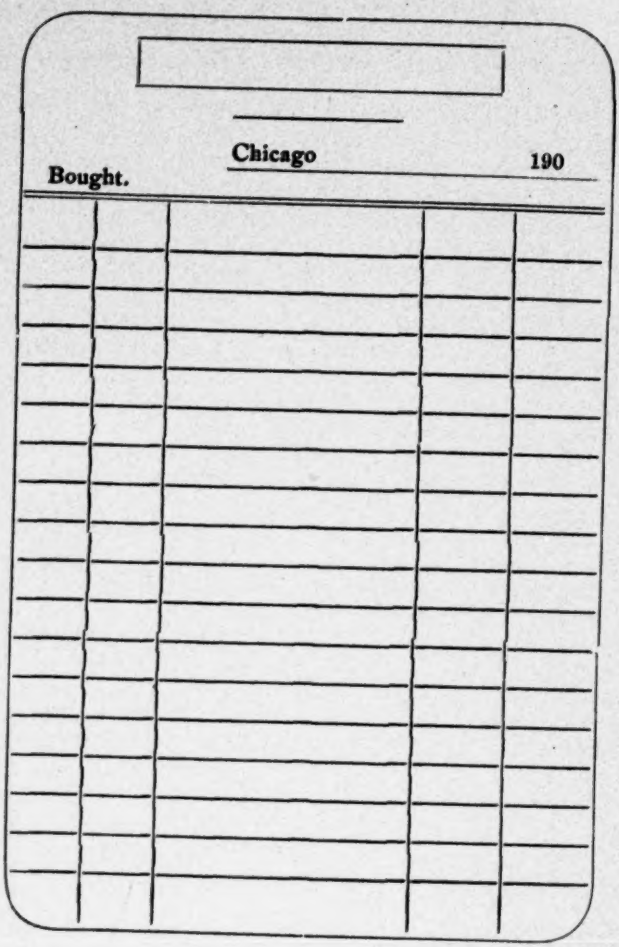
Q. How do the cards that each man has there compare with this one which I now hand you?

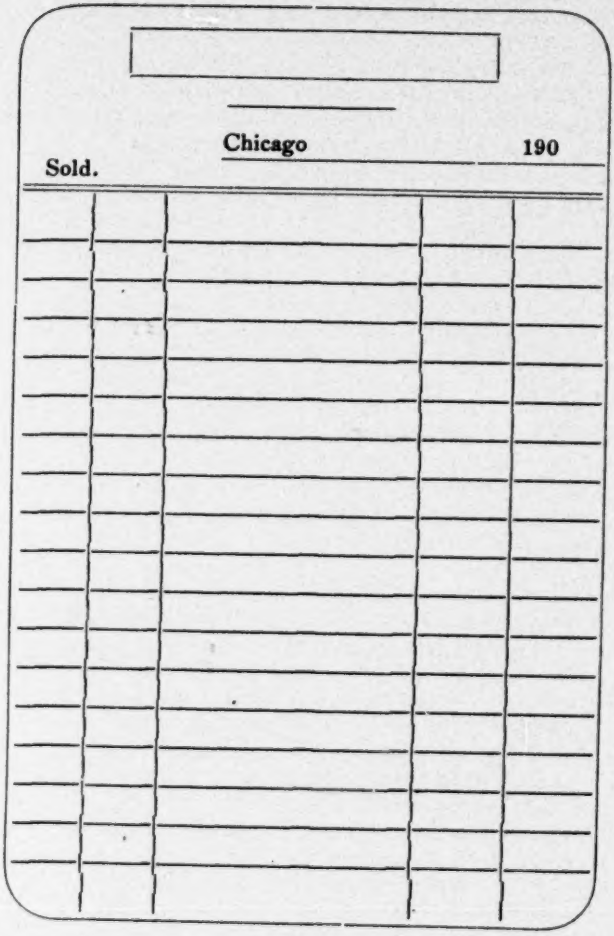
A. Well, they are as a rule similar to that but some of them don't have the "bought" on one side and the "sold" on the other but they have the same as this card red on one side and blue on the other and they go by the color, not by the printed word on the top, bought and sold.

Q. But the card means—the two sides of it, one a purchase and the other a sold side? A. Yes.

949 Mr. Jenks: I offer that in evidence as Defendant's Exhibit 9.

Thereupon said card was admitted in evidence and marked Defendant's Exhibit 9, and is in words and figures following to wit:


Chicago
190
Bought.


Chicago 190
Sold.

950 Q. Then if that order had been to purchase and you had executed it, what would you put down on the purchase side of your trading card?

A. I would put the amount of the purchase, the price of the purchase, the time of the delivery of the purchase, the party from whom I made the purchase and the party for whom I made it.

Q. That is what you would do now-a-days, is it?

A. I think so.

Q. On the Board?

A. I think so, it is not a rule, it is a custom.

Q. Then after executing that order, if you had other orders to execute there, what would you do as to those?

A. The same as I have done with this order.

Q. And put them all down on the same trading card?

A. Well, without there was some occasion for me sending the card to the office I would continue to use that card until it was full.

Q. And then take another one?

A. Sometimes they want to get the cards into the office and get the trades entered up, and we—

Q. Then after doing that and you either send or take the card to the office, what is done in the office about the card and the deal? A. The trade is entered up on the books.

Q. What book or books?

A. Well, it is entered first on what you call an option—the option book, trading book and the same entries that are made on the card are made there that is the book of original office entry?

Q. Then what is done as to the customers?

A. Then the purchase or sale as it may be, is posted to a customer's ledger, grain ledger if it is grain, customer's account ledger, the purchase or sale is posted to his account in that ledger.

Q. What names are on the option book?

951 A. The same names that are on the card.

Q. That is, you put the name of the Board of Trade man from whom you have bought? A. Yes sir.

Q. And you put in another column the name of the person for whom you have bought? A. Yes.

Q. And you put in one column the option?

A. [Moth] of delivery, time of delivery, yes.

Q. And in another the amount? A. Yes.

Q. Then suppose you get an order from the same customer to close out that deal, what is done?

A. Well, the same thing is done on the other side.

Q. You go on the floor? A. Yes.

Q. Make a sale instead of a purchase? A. Yes.

Q. And you put down in the same way only on the other side of your trading card? A. Yes.

Q. Bring it back to the office and put that on the books in the same way? A. Yes.

Q. Then after that is done, what is the next thing so far as the customer is concerned?

A. Render him an account purchase and sale.

Q. Showing what?

A. Profit or loss, whichever there may be.

Q. Suppose there was a profit in a transaction and he wanted to close his account with you, what would be done?

A. Why we render him an account purchase and sale of these two transactions after charging him the commission agreed upon and the tax and other charges if there are any. We credit his account or charge his account with the profit or the loss.

Q. And if he wanted to close the transaction with you and he had made a profit, would you send him a check?

A. Yes sir.

952 Q. And the amount of that check would be the amount of the profit which would result from the difference in the two market prices after deducting your commission and at present the revenue tax, wouldn't it? A. Yes sir.

Q. And if you had a margin up, your check would also include that margin? A. If he had a margin up?

Q. Yes? A. Yes sir.

Q. What is the usual commission charged to the customer?

A. On what?

Q. Wheat?

A. Well, if he is a member of the Board of Trade it is a sixteenth of a cent a bushel, and if he is a non-member it is an eighth of a cent a bushel.

Q. Now we will suppose that on one day you go on to the floor with ten orders from ten different customers to buy wheat at the market price and each order is for ten thousand bushels of wheat; you find some man on the Board who offers to sell a hundred thousand bushels of wheat for the same delivery meaning by that, the same month delivery, and you purchase that wheat from him in a hundred thousand bushel lot, that is frequently done, is it not? A. Oh, yes.

Q. You put that transaction with him down on the trading card? A. Yes sir.

Q. The hundred thousand bushel lot? A. Yes.

Q. And you also put down on that trading card as you stated before, the names of the ten customers for whom you have bought that wheat?

A. We would enter that trade in ten thousand bushel lots from the man we bought it from instead of putting down the

trade of a hundred thousand, we would put down ten trades of ten thousand each.

953 Q. That is what you would do? A. Yes sir.

Q. Has that always been done by the firms for whom you have worked as well as by yourself?

A. So far as I know, I should think it would be.

Q. Then when you get back to the office how is that transaction entered on the option books?

A. Just the same as it is on the card.

Q. Ten thousand bushel lots or five thousand bushel lots?

A. Well, it might be entered in five; some people keep their option books some way and some another.

Q. Do you keep yours in five thousand bushel lots or ten thousand bushel lots?

A. Well, I always kept mine in five thousand bushel lots; some firms do it one way and some firms do it another.

Q. Well, these other firms that you have worked for, did they keep it in five thousand bushel lots or ten thousand?

A. Well, when I kept the books I kept them in five thousand bushel lots.

Q. And so far as you know, that is the way it is always done, isn't it? A. I think it is rather a prevailing custom.

Q. Now on that option ledger, those items in five thousand bushel lots would commence with the name of the man the member of the Board with whom you had the hundred thousand deal, and that would be put down there five thousand bushels of that option, then you would continue that right along down, dittos five thousand each until you got twenty of them, wouldn't you? A. Yes.

Q. Then on the same book, do you put down the names of the ten customers?

954 A. That the property was bought for?

Q. Yes? A. Certainly.

Q. You have to divide that up then when you put the names of the ten customers there? A. Divide it up, how?

Q. When you only have ten thousand bushels bought for each one of them you have a lot—

A. Well, you put the customers names opposite—[it] is it ten wheat you put it opposite two fives, that makes it ten.

Q. And you put it just as it happens to be convenient, you may put Smith or Jones at the top just as it happens to come?

A. Where it is all bought from one man?

Q. Yes? A. Yes, yes.

Q. Now we will say that one of your customer's name is Smith, you have bought a ten for him and he orders you the same day or the next day to close that out? A. Yes.

Q. And you go on the floor and you make a sale of his ten, you put it on the trading card and you come back. Now that

closes out the ten that he has bought that you have put down on the option book? A. Yes.

Q. When it is closed out what do you put on the option book for Smith?

A. Put down the sale that I have made for his account.

Q. Does that appear on the same page or the opposite page of the option book?

A. On the same page or the opposite page?

Q. Yes.

A. Not necessarily, it might be done two or three months later you know.

955 Q. Yes? A. And we have gone over many pages.

Q. But what I want to get at is whether it is set down opposite the transactions of the purchase for him?

A. On the option book?

Q. Yes?

A. No sir, not necessarily, it might happen that way.

Q. But it is not the plan to do it that way A. No sir, no.

Q. Now we will say that he orders the sale the next day and he closes that deal, don't you keep that merely in the customers ledger where you have got his name down at the top of the page, and where you have got down to him in the first place a purchase of ten thousand bushels of December wheat say, and then don't you put right opposite that a sale of the ten thousand bushels, and carry out there the difference in the market price? A. No, I don't do it that way.

Q. Do you keep the customer's option ledger? A. Yes sir.

Q. Now how would you enter on the customer's option ledger those two transactions?

A. Enter one on the bought side and the other on the sold side, but they might not come opposite each other, for instance, might buy 10000 bushels of wheat that would be entered on the purchase side, then the customer might come along and sell fifty thousand bushels of grain. I would start right on the opposite side of that ledger, don't you see, and then when he sold out his ten of wheat it might be clear down to the bottom, but the only other entry that is made on that option ledger is when the account is rendered, the time of the rendering, the account is set opposite the purchase and the sale and that closes the account and shows that it is off.

956 Q. Yes?

A. But the extensions of the profits and losses are not made on the option ledger.

Q. Where are they made?

A. They are made in the purchase and sales book in the account—in the account which is rendered, the purchase and sale account.

Q. And that is the account with your customer?

A. Yes, for the customer.

Q. Now you are extending the thing on a larger scale than I started it?

A. Well, I was trying to make it clear, that is all.

Q. We will suppose that the customer instead of limiting himself to one order or a purchase had from time to time sent you a dozen orders to purchase? A. Yes.

Q. Ten thousand bushels? A. Yes.

Q. You would have that down in his account and the date and suppose they were all for the same option? A. Yes.

Q. Now, he orders you to close out one transaction and you do close it out? Would you close it out by making a sale of ten thousand bushels for the same option? A. Yes.

Q. Now you would put that down in his account where?

A. On the sold side of his option ledger.

Q. And opposite each item of purchase?

A. It would not make any difference, we would put it in the first vacant line on the sold side.

Q. And to which transaction of purchase would that first sale apply?

A. Without there was directions from him, our custom is to make up the oldest trade, mark it up against the oldest trade that is made, but customers sometimes instruct against what purchase they want a certain sale made up or vice versa.

957 Q. Now did you always make a sale and close out a customer's account upon his request?

A. Always make a sale of property if he was wrong?

Q. Whenever he ordered it?

A. I can't recollect a case where I ever refused to sell property that I had bought for a customer.

Q. You would make that sale for the customer without reference to how the purchase stood from the other member of the Board of Trade?

A. Having made a purchase from some other member of the Board of Trade?

Q. Yes.

A. For the customer, would I in filling his order to sell out that customer have any reference to this purchase?

Q. Yes. A. I can't see where I would.

Q. As a matter of fact you would not, would you?

A. I don't think I would.

Q. Then you close up the transaction as between yourself and your customer? A. Yes.

Q. And you end that by paying the difference less the commission and the revenue tax?

A. Paying the profits or loss, the difference, yes.

Q. If there was a loss to the customer you would take that loss out of the margins that he had put up, wouldn't you?

A. Yes sir.

Q. And give him what was left? A. Yes sir.

Q. Now with reference to that purchase from the Board of Trade man, as a rule, in this commission business, how were those transactions closed up as between the two members of the Board, both being commission men?

Mr. Robbins: Is that confined to his business?

958 Mr. Jenks: Yes. A. You mean as a custom?

Q. Yes.

Mr. Robbins: In your own business he means.

Mr. Jenks: In your own business or that of the firms with whom you have been connected?

A. Well, they could be closed in either of the two ways, by delivery of the property or by an agreement of settlement through the clearing house.

Q. Well, that does not exactly answer the question; how would that be closed up as a rule?

A. Well, they are closed up in two ways.

Q. Well, as a rule the majority of them are closed how?

A. Well, you didn't say a majority of them. I should say the majority of them are closed by agreement through the clearing house.

Q. And by means of a ring, or direct settlement?

A. Yes, either way or both ways.

Q. You say a majority of them are closed by the ring through the clearing house? A. Yes.

Q. How large a majority of them are closed in that way in the commission business where they are dealing in the futures?

A. Well, I should again have to estimate because I don't know of any way of knowing exactly.

Q. Estimate it and give us your best judgment?

A. A very large per cent, a very large per cent: I should say that more than 95 per cent of them are closed that way.

Q. Then in closing that transaction with the other member of the Board, how is the ring and the closing arrived at?

959 A. Well, in futures there is sometimes—you in trading will have what you call a [direct] settlement; you will have property bought from another member of the Board and in your contract you will find that you have got property sold to him for the same delivery the same terms and everything, then you agree between you to settle that through the clearing house. Then the houses have what they call settling clerks that take their open trades, and these settling clerks get together, and they find for instance,—A has the settling clerk,

this settling clerk has wheat bought from B; he gets hold of B's settling clerk and says who have you got wheat bought from, he has got it bought from C, and C has got it bought from D and they find that D has got it sold to A, so they all agree between themselves that they will settle that trade through the clearing house.

Q. What do they say when they make that agreement?

A. Well, that is—they say, we will settle this, we will make settlement, we will settle it.

Q. Do they ever say anything when they make that agreement as a rule, do they do anything when they find that the ring exists, report that to the office and then is not the clearing house sheet made out from that without anything being said at all about settlement?

A. Well, I don't know what they say; that is the modus operandi, and that is the understanding.

Q. That is— A. That is what they are there for.

960 Q. That is the understanding in the beginning isn't it, that when trades ring up they will close them by the ring through the clearing house?

A. Not necessarily, not necessarily.

Q. Did you ever know of anybody to refuse to enter into the ring and close up the transaction?

A. Oh, very many times.

Q. Very many? A. Oh, yes.

Q. How many compared with the whole lot?

A. Oh, very small as compared with the whole, but I have known many occasions where people would refuse to settle.

Q. Yes, now the general custom there is to close up by the ring isn't it through the clearing house?

Mr. Robbins: Wait a moment, wait a moment, you mean your own business?

Mr. Jenks: Yes.

A. The vast majority of the trades are settled that way.

Q. What proportion of them would you say are settled that way?

A. I have already stated that I think 95 per cent of them are settled that way.

Q. Then finding that the ring exists, what next is done in closing that transaction?

A. Well, these settlements are reported to the different firms interested whose trades are involved in the settlement.

Q. Reported by whom? A. By their own clerk.

Q. That is to say, your house would get information from your own clerks?

A. Well, now I stated that most houses have settling clerks, we haven't any; we get our information from the other settling

clerks, the settling clerks of other houses; they come and notify us that we can make a certain ring—we can settle up
961 through the clearing house a [ceratin] trade that we have got bought of one party and sold to another and if we choose we settle it.

Q. Well, as a rule you choose? A. Yes sir.

Q. And having made your choice what is the next thing done?

A. Those two trades the property bought from and the property sold are put on what is called the settling book.

Q. Kept by you? A. Kept by our clerks, yes.

Q. And what is contained in that book?

A. Well, there is—the purchase and the sale are entered in the book, and there is an agreed price marked every day upon the blackboard for the purpose of facilitating these settlements, and that price is supposed to be about the market price, and we put in our—we enter on this book, if we have got wheat bought from A, at seventy cents, and this settling price is seventy-two cents, A owes us two hundred dollars or two cents a bushel on that wheat. That goes against him on this settling book; it also goes against him on the clearing house sheet that we have.

Q. Wait a minute, just about the book; confine yourself to the book until you get through with that.

A. Well, then, this A owes us the two cents a bushel on the settling book. Now if we have got this wheat sold to B at seventy-five cents a bushel and the settling price is seventy-two, B owes us three cents a bushel, that goes against his entry on the book.

Q. Suppose there are half a dozen men to make the ring?

A. They have nothing to do with our books. We don't put any entry [execpt] the two people that we have got the trade with.

962 Q. You don't put anything there in any book except the person from whom you buy— A. No, I think not.

Q. And the person to whom you sell? A. I think not.

Q. And the price?

A. We keep a memorandum on a slip of paper as to who the other people are involved in this, others involved in it so that if there is any error or misunderstanding or anything so we can trace it back, but on the settlement book, I think only the names of the parties that we have the trades with are entered.

Q. Now do you enter there also the settling price?

A. Oh, yes.

Q. Who makes that settling price?

A. It is made by the officials of the Board in some way. I don't know whether the manager of the clearing house makes

it or whether the clearing house committee makes it; it is made by some functionary of the clearing.

Q. Isn't it made by the Directors of the Board?

A. I don't think so, it is made every day and they only meet once a week, it may be made by the committee, I disremember, it is one of those little details of the thing that I don't remember, but it is made by some functionary of the Board in connection with the clearing house system.

Q. Then after you have got that entered on the ring book, what is the next thing done?

A. Well, we make out the clearing house sheet.

Q. Will you look at defendant's exhibit 1, and state whether that is the clearing house sheet that you fill out?

A. Yes, it is.

Q. Who furnishes that clearing house sheet?

963 A. Why the clearing house furnishes it.

Q. To whom does it furnish them?

A. Those who are—who clear through the clearing house, members of the Board who clear through the clearing house.

Q. Will you describe how you do make out the clearing house sheet and how you did for yourself, and for all firms with whom you were connected, talk it out, so that the reporters can get it, how that should be filled out?

A. Well, the column that we fill out we claim against any member of the clearing house—

Q. Let's take one member and call it Samuel O. Adams?

A. Well, if we had any claim against Samuel O. Adams, it would grow out of an agreed settlement of property dealt in on the floor, the amount that Samuel O. Adams would owe us if any would be the difference between—would be based upon the difference between the price at which we had the trade with him and the—what is called the settling price, which had been fixed for settlements made on that day.

Q. Then we will suppose that you had a purchase from Samuel O. Adams, and you had a sale made to E. W. Bailey & Co., how would that be filled out?

A. Well, suppose we had five wheat bought of Samuel O. Adams at seventy cents, five thousand bushels of wheat sold to E. W. Bailey and Company at seventy three cents now if the settling price was seventy-one and a half, that would show on that, they would each owe us a cent and a half a bushel which would be seventy-five dollars. We would put in the clearing house sheet showing that each of those firms were in-

964 debted to us for seventy-five dollars, they would have to put in the same showing the credit to us and the sum total of those clearing house sheets must be a balance.

Q. And then in case you put, there is money due you, and you send with the clearing house sheet no check?

A. Not when money is due us.

Q. But you would get the check for the money that is due you? A. From the clearing house?

Q. From whom would you get that check?

A. Get it from the manager of the clearing house.

Q. To whom would the check given by Samuel O. Adams and Bailey & Company on their clearing house sheet be payable? A. The clearing house.

Q. Have you been familiar with the clearing house sheets made out by F. G. Logan? A. Well, I have, sir.

Q. In his business?

A. Merely see them; they are made by the clerks, but I know in a general way how they are made.

Q. As a rule how many items are entered on the clearing house sheets from F. G. Logan, that are sent to the clearing house?

A. I could not tell you. I don't see the clearing house sheets once in two months.

Q. Well, as a matter of fact, on the clearing house sheet sent by F. G. Logan to the clearing house there were usually a large number of transactions on each sheet were there not?

A. Oh, I suppose there were, yes.

965 Q. And usually in the same way the members of the Board who had dealings with F. G. Logan & Company, each one of them would have to send in a sheet? A. Yes.

Q. And on those there would be several different items?

A. Probably.

Q. Now Mr. Crosby, is there any record kept in the clearing house that you know of to show the transactions that are settled through the clearing house?

A. No sir, there is not.

Q. So far as you know, the matters that appear on the clearing house sheets are merely items of cash including the totals of transactions or results from transactions?

A. All items of cash; there is nothing of bushels or barrels or tierces or anything of that sort on the clearing house sheet.

Q. Do you say that F. G. Logan did not have a person in his employ called a settling clerk?

A. He has not had for some years; he may have had one before I went with him, but they never have for sometime kept a settling clerk.

Q. Now you keep the ring book?

A. Keep the settlement book.

Q. Don't you keep the ring book?

A. Well, we call it settlement book.

Q. Is that the same thing you have described as a ring book?

A. I presume it is the same thing you refer to as a ring book.

Q. Where does your clerk get the items to enter on that?

A. They are brought into the office by people with whom we have trades.

Q. Now you stated that whenever there is a ring as a rule, the members of the Board of Trade settle by ring through the clearing house; do they do that without reference to their customers, whether the trades with their customers are
966 open or closed? A. Yes sir.

Q. Then where they make the purchase on the Board of Trade for a customer they frequently ring out that trade with the number of the Board, and settle their two contracts, one of purchase and the other of sale, without reference to the customer? A. Yes.

Q. Do they? A. Yes.

Q. What has the settling price that is made on the Board to do with the settlement with your customers?

A. You mean with our customers?

Q. Yes.

A. You mean the settlement price by which—on the basis of which these clearing house sheets are made?

Q. No, you have stated that somebody on the Board of Trade makes a settling price? A. Yes.

Q. What has that to do with your customers?

A. Not a thing.

Q. What has that to do with settlements made between members of the Board of Trade?

A. It is merely a convenience for figuring the differences on trades settled through the clearing house. It has nothing to do with the price or the amount paid or the amount received, simply a labor saving convenience.

Q. How is it a convenience?

A. Well, it is a convenience in the way of book-keeping.

Q. Book-keeping on the part of whom?

A. Of the members of the Board and in proving the balance through the clearing house. If every member of the Board knows that those trades are to be settled—for instance, if we have five wheat bought of Samuel O. Adams at seventy
967 cents and we had wheat sold to Bailey at seventy-three cents, now we haven't got to go around and find out what price Bailey has got with Adams, and they haven't got to come and find out what price we have got with both of them in order that each person shall send in the exact amount, but he has to collect the exact amount due him; if the settling price we know is seventy-one and a half, that is the price we take, and it is a convenience to know that, and all settling on

that basis the result is the same as if each man paid and claimed the exact amount that he should on any specific trade.

Q. Let me see if I understand that. Without that settling price, if you have wheat bought from one man at 70 cents and sold to another man at 72 cents, the amount that that man would owe you on the wheat would be two cents?

A. Each man.

Q. The one to whom you sold it?

A. Not necessarily; the other man might owe it and might owe more than that you see.

Q. I see. If you had it bought from one man at 70 cents and you had it sold to another man at 72 cents, there would be due you the two cents, wouldn't there?

A. Not necessarily.

Q. How?

[—] Not necessarily, the other man might owe it.

Q. Which man, the one from whom you bought it?

A. Yes.

Q. But you bought it at seventy cents?

A. It don't make any difference what price I bought it, he might have bought it at 75 cents.

Q. You sold it at 72 cents? A. Yes.

968 Q. Now there is two cents due you? A. Yes.

Q. If that was the end of the transaction, you bought it from one man and you have a profit in there of two cents?

A. Yes.

Q. And that profit is due you? A. From whom?

Q. Well, it is due to you? A. Yes.

Q. Now, who is it due to you from?

A. Well, I don't know, and having a settlement price takes—we don't have to know and we don't have to find out.

Q. And you don't care?

A. No, that is the convenience of having a settlement price.

Q. Having a settlement price takes—well is it a settlement price that is fixed arbitrarily on the Board?

A. Practically yes.

Q. We will say the settlement price is fixed at 73 cents?

A. Yes.

Q. Now I want to know who owes that two cents to you?

A. The clearing house owes us the two cents.

Q. And anybody else?

A. We don't look to anybody else, we don't have to.

Q. You look to the clearing house?

A. We don't have to with the fixing of the settlement price we don't have to know as it is as usual.

Q. Yes?

A. And we don't have to find out in order to put in our clearing house sheet.

Q. But the clearing house owes you two cents?
A. We always look to them, they always pay it.
Q. Do you take that back or leave it there as it was, that the clearing house owes you two cents?
969 A. Well, the clearing house is not responsible in the matter whatever; the clearing house is simply a matter of convenience, it has no responsibility, it does not guarantee us our trades or our money.
Q. But the clearing house pays you the money? A. Yes.
Q. Now I will suppose that the settling price is fixed to-day at seventy-one cents, who owes you the money, the two cents?
A. We look to the clearing house for the money.
Q. Who pays the clearing house the two cents that is owing to you where the settling price is 71 cents?
A. Well, they may both pay a part of it, I don't know.
Q. And where you have bought at seventy cents and sold at seventy-two cents, who pays a part and how is it at the time where the settling price is seventy-one cents?
A. Well, it depends on—

Mr. Robbins: Wait a moment, I am going to interpose an objection here to this reiteration, I think there ought to be some limit to going on in the record here in the way it is done.
The Master: The Master considers a good deal of this evidence as repetition, but it will go in over the objection of complainant, and the defendant can take the [conquences] when the matter is brought up before the court.

Mr. Jenks: Q. What I want to get at, Mr. Crosby is this, these settlements through the clearing house all come by means of a ring, or else a direct settlement, one or the two?
A. Some of them might come by delivery, but most of them come [thay] way.
970 Q. Well, there is nothing to the clearing house by delivery except differences in the market price, is there?
A. Well, it is the same thing, but they don't grow out of rings in case of delivery, they grow out of the delivery.
Q. Well, now, suppose there is a ring you are one of the parties in it, you have wheat bought at 70 cents, and sold at 72; there is two cents coming to you without reference to the other persons in the ring; now the two cents is divided up between those other persons and each one has to pay what he is owing to the difference in market price at which he bought or sold, is that so? A. Yes.
Q. Now you have stated that many may go into the clearing house as a result from delivery. How are deliveries made on the Board of Trade? Are they not by notice that is passed from one to another?
A. They are—most of them are made that way.

Q. Now we will suppose that that notice has started out from one person and it goes through the hands of half a dozen others? A. Yes.

Q. And lands with the last one? A. Yes.

Q. How does that last one get a delivery of the property to him?

A. He takes this notice which is in form a bill for that property and he goes to the member who put out this notice and he pays that party for this property at a price that is fixed the same as the settling price is fixed for the purpose of that.

Q. Well, he goes to his office? A. He goes to his office.

Q. And gives him a check?

A. And gives him a check and get the warehouse receipt.

Q. And there gets the warehouse receipt? A. Yes.

971 Q. So that that transaction of delivery and respecting the payment of the stuff don't go into the clearing house at all, does it? A. No.

Q. Then the only thing that gets into the clearing house about that is the difference in market price between these half dozen men who have had to do with that notice?

A. That is all.

Q. Yes, and those differences are settled through the clearing house just [—] they are on rung up deals?

A. Precisely.

Mr. Robbins: You mean Mr. Jenks, the difference between their price and the delivery price, of course?

A. Well, it is the delivery price and—

Mr. Jenks: You need not pay any attention to Mr. Robbins just at this time.

Mr. Robbins: Well, I was addressing you, not the witness.

Mr. Jenks: Q. Now, Mr. Crosby, in your description of a single transaction, a single order and the closing out of that order, does that apply to all transactions where the orders are of the same kind?

A. Well, which transaction do you refer to?

Q. Where you are acting as a commission man, you have described only a single transaction so far. I want to know whether all of the transactions are conducted in the same way?

A. So far as I know, yes.

972 Q. And the matters through the clearing house are all conducted in the same way?

A. So far as I know, yes.

Q. In your business and that of the houses with whom you have been connected, is there and has there been any such thing known as stop orders? A. Stop orders?

Q. Yes? A. Yes sir.

Q. Is a stop order one that is given by the customer to the commission man to limit his loss?

A. It may be, or it may be an order that the commission man puts in to protect himself against loss.

Q. Does the commission man himself make a stop order with his customer? A. For his customer?

Q. With his customer?

A. Make it with his customer? He does not make the order with his customer, but he makes it for account of his customer.

Q. For whom does he make it?

A. Well, he puts—a stop order is an order that is put in the market to—if property goes to a certain price, either buy it or sell it, whichever way it might be.

Q. Well, that is a stop order from the customer?

A. Yes, sir.

Q. Now how does the commission man make a stop order and with whom does he make it?

A. That is the way the commission man makes the stop order.

Q. With whom does he make it?

A. Well, he makes it with his trader on the floor, whoever executes his orders on the floor.

973 Q. Well, then, he makes it with himself, the man who executes his orders on the floor is the man that he employs? A. Well, that is what we call a stop order.

Q. That is to say, you frequently go to the man who is working for you on the floor and order to close out a transaction if it reaches a certain price? A. Precisely.

Q. That is to protect yourself? A. Precisely.

Q. And do you do that without any orders from your customer? A. Sometimes.

Q. Under what circumstances do you close the customer out in that way?

A. Why when the money that he has in our hands is insufficient to protect us from chances of loss.

Q. Then you close him out? A. Yes sir.

Q. Do you close him out in every instance when his money runs out?

A. Well, not in every instance; sometimes where—it depends on the standing of the customer whether we think he is good for it beyond that point.

Q. But as a rule, if the money runs out you close out the deal?

A. I would not say as a rule, but we often do it; it depends entirely upon the credit of a customer.

Q. If you get an order from a customer to make a purchase on his account and he notifies you with that order to limit his

loss to a certain amount, do you execute that order on the Board just the same as you do any other?

A. If I execute it at all, I would execute it on the Board.

Q. That is not the question whether you would execute it just the same as you would any order that did not have a stop clause to it?

974 A. I would not take the order on those terms.

Q. You would not? A. No, sir.

Q. You have executed a great many though, that had stop orders haven't you? A. Oh, yes.

Q. Yes?

A. But there was a string tied to it, there was something else with it.

Q. Certainly? A. Yes.

Q. Now if you had a stop order after the purchase was made to limit the loss say to five cents, and the commodity went down, you would close it out as near the five cent limit as you could, wouldn't you?

A. Well, a stop order is not operative, that is—as I understand it, until the limit has been reached.

Q. Very well?

A. After the limit has been reached then you execute the order the best you can.

Q. You close it out if a purchase by sale? A. Yes.

Q. And if a sale you would close it out by a purchase?

A. Yes.

Q. Do you mean to say, Mr. Crosby, that if a customer of yours who has an account with you and has money up with you so that he is perfectly good would send you an order this morning to purchase ten thousand of wheat at a price and to limit the loss to a decline of one cent a bushel that you would not execute that order to purchase?

A. If that was all the understanding or all the conditions, I would not do it.

Q. What other conditions could there be so that you would do it?

A. The conditions would be that I would have the understanding with him that I would come as near doing that as I could.

975 Q. But that is what I mean?

A. Anything that was lost on that he would have to stand it.

Q. That is, inside of the time?

A. That is the reason I want that included.

Q. Then you would execute it?

A. Yes, on those conditions if he had money enough to protect it, reasonably beyond that or his credit was good, I would take the order.

Q. Then you would close that out without any further order from him if it should decline one cent?

A. If it touched his limit whatever it was, I would close the trade, I would make the trade that he ordered me to.

Q. Is there such a thing known on the floor as hedging?

A. Hedging?

Q. Yes?

A. That is a term that is in use on the floor in the trade.

Q. Are purchases and sales made there by people for the purpose of hedging?

A. That is a term that has intelligence to me; I consider that it applies to a certain class of transactions, hedging deals.

Q. Are there also such transactions there known as scalping?

A. Scalping yes, that is a term that is in use in the trade.

Q. Are the scalpers members of the Board of Trade?

A. Well, it is a term that is likely applied—scalping is applied primarily to members of the Board who stand in the wheat pit for instance and trade for their own account on small profits and small losses on fluctuations in the market.

Q. That is to say, let's take the case of scalping and
976 the scalper is operating in May wheat. How does he conduct his scalping operations?

A. Well, the term scalping is applied primarily to those traders who stand in the pit and trade for an eighth or a sixteenth profit or loss, make a rapid turn in the market.

Q. Close out a trade as soon as they can get a small profit?

A. Yes, or a small loss, as quick in one way as the other.

Q. Now, we will suppose that they are operating in May wheat and that they buy May wheat; they close that out as soon as the profit which they want is in it, do they?

A. Well, they close it out—they never carry a trade any length of time, or any amount of profit at loss. They are distinguished from other speculators in that way.

Q. And they never receive any property do they or pay—

[Q.] They may, but they don't as a matter of fact.

Q. Well, if they are now dealing in May wheat and they close out their deal before May, they don't receive or deliver any property, do they?

A. They may buy wheat and sell it out, and they may have any number of May trades on their books when it comes May if they are not able to settle it up.

Q. As a rule, don't the scalper close up his deal the same day of the next day?

A. Well, by closing—what deals do you mean, by closing his deal?

Q. Well, if he has bought he sells it?

A. Yes, but he sells—he still has the trade on his books without he settles it up.

977 Q. Well, I will get to that, Mr. Crosby; if he buys as a scalper—

A. You are using the term, close. I don't know what you mean. I am trying to explain what it is.

Q. You don't know what closing a deal means on the Board of trade? A. Well, I don't know what you mean by it.

Q. Well, you don't know what closing a deal on the Board of Trade means? A. Closing it?

Q. Yes? A. No, I would not know.

Q. You don't know?

A. I would not know actually what you meant by closing a trade.

Q. Yes?

A. You might even mean that if you are long you sold it out, or if you are short you bought it in, or you might mean that you rung it up or made a delivery of it I would not know which you meant.

Q. You would not know anything about it?

A. I would not be sure, I would not be sure what you meant.

Q. I will put a case to you; suppose I am your customer?

A. Yes.

Q. And I order you to purchase ten thousand bushels of May wheat? A. Yes.

Q. And you execute the order? A. Yes.

Q. And I afterwards direct you to close that deal, would you know what I meant? A. Perfectly, yes sir, perfectly.

Q. What would you do?

A. If you had bought it I would sell it out.

Q. Then how would you close that deal with me?

A. How would I close it with you?

Q. Yes?

A. Well, I wouldn't know when you are asking me about closing deals, whether you meant that transaction of a

978 delivery or settlement of the property.

Q. Well, if a deal be closed before the time for—

A. Closed with whom?

Q. Before the time for delivery comes, keep that in mind. how is it closed? A. How is it?

(Question read.)

A. It is closed through the clearing house.

Q. By ringing up, isn't it, or by direct settlement?

A. Yes, one way or the other.

Q. And in either event it would be done in the same way that you have described before? A. Yes.

Q. Mr. Crosby, you have stated that some of these houses have private wires, I mean commission houses with whom you have been connected? A. Yes sir.

Q. Which ones have had private wires?
A. F. G. Logan and Logan & Bryan.
Q. In your business that you were conducting for yourself, you had no private wires? A. None.
Q. In those days, did commission men, as a rule, have private wires? A. No.
Q. How long have the private wires, among members of the Board of Trade been in use?
A. Well, I think the first private wire that I remember was put in use about ten years ago.
Q. Whose was that? A. John Lester's.
Q. What is a private wire?
979 A. Well, in general terms, it is a wire that is leased from one of the telegraph companies, or it might be a telephone company for the entire use during certain hours of the day, of the person who leases it.
Q. What are transmitted over those private wires?
A. Well, orders and market reports, market gossip, anything that the firm leasing the wire wishes to send or that their correspondents desire to have.
Q. If market reports are transmitted over those wires where are they first obtained? Take the house of F. G. Logan?
A. Take our present system—
Q. No, not the present, the house of F. G. Logan, which went out of existence this year?
A. Well, we got the markets off what we call a ticker, the stock markets, grain markets, and provision markets, we got them off the ticker.
Q. Who furnished the market reports to F. G. Logan?
A. The ticker company.
Q. Did F. G. Logan have the market reports, the continuous market reports all the time you were with him?
A. Practically.
Q. Where was F. G. Logan's office for the five years that you were with him? A. In the Board of Trade building.
Q. Did he have a blackboard in his office? A. Yes.
Q. What appeared on that blackboard?
A. Oh, quotations for stocks, grain, provisions, and the daily and weekly movement of produce and rates of money, and general financial and commercial information.
980 Q. Did the market reports from the Chicago Board of Trade appear there? A. Yes.
Q. How frequently were they placed on the blackboard?
A. Well, generally speaking as often as there was any change on the quotations.
Q. The reports from the Chicago Board of Trade were entered in what shape on the blackboard? A. In chalk.

Q. I mean, were they entered in column up and down vertically or horizontally?

A. Vertically on the Board mostly—yes.

Q. The report for the day's business would be where, at the top? A. For the day's business?

Q. Commencing with the day's business?

A. The opening would be at the top, the opening price would be at the top.

Q. Then as the reports changed in price, those prices are entered how on the Board?

A. Underneath the opening.

Q. How large a room was that blackboard in?

A. I should say it was a room about fifty by twenty-five, something like that.

Q. Feet? A. Yes sir.

Q. How large was that blackboard?

A. Well, you mean the total blackboard?

Q. Yes?

A. Well, it is about I suppose, eighteen feet long and about twelve feet high.

Q. And were those market prices posted there on the blackboard the instant they were received? A. Supposed to be.

Q. How does the man who writes down the figures
981 get the information? A. Gets them from the ticker.

Q. Does he observe the ticker himself? A. Yes.

Q. Or does some one call off the—

A. Well, in stocks, sometimes himself and sometimes some one calls off, dependent upon the activity of the market. In grain Chicago Board of Trade quotations he observes them himself.

Q. And the ticker compared with the blackboard is where?

A. Right beside the blackboard.

Q. Are there chairs in that room there for customers?

A. Yes.

Q. About how many? A. Oh, about eight.

Q. During business hours are those chairs occupied by customers? A. Usually.

Q. Are those market reports from Chicago Board of Trade posted there on the blackboard for any purpose?

A. For the convenience of our customers and ourselves.

Q. How is it a convenience to the customer?

A. Tells them what the market is.

Q. And if they are interested in the market reports, those customers usually have deals on of some kind, haven't they?

A. Many of them do.

Q. And if a change in the market reports posted on the blackboard is of such a character that the customer wants to make a change in his deal, what does he do?

982 A. He gives his order.

Q. To whom does he give the order?

A. Any one in the office that is qualified to take it, myself or my assistant.

Q. Are the orders given in writing or verbally?

A. Not necessarily.

Q. He would give his orders to close it or to make a deal just as he pleased? A. Yes.

Q. Are those orders executed?

A. Executed when they are given and it is possible to execute them.

Q. And immediately?

A. As soon as—if they are limited orders, they may not be executed immediately.

Q. No, but immediately? A. Market hours.

Q. As soon as it is possible to do it? A. Certainly.

Q. If he gives the order to close out at a certain price and it can be done that order is executed immediately? A. Yes.

Q. How many different commission houses, members of the Chicago Board of Trade to your knowledge have had blackboards in their offices for the past several years or at the present time? A. About how many?

Q. Yes? A. Oh, I should guess fifty that I know.

Q. Are those blackboards used by those different houses substantially for the purpose that you have stated with reference to F. G. Logan? A. Yes.

Q. You have said something about a ring being formed before the time for delivery come and some men in the ring would refuse to settle by the ring through the clearing house. Have you in mind any such transactions where the

983 man did refuse although there was a perfect ring?

A. Oh, yes, I have know many such transactions.

Q. Then we will suppose that that ring existed until the day of the delivery of the commodity without being settled and that man should refuse to settle by the ring, would start out and notice that he would deliver the commodity by a warehouse receipt which he had in his possession according to the practice up there, would that notice be handed by him to the next one, the one to whom he had the property sold, by him to the next, and him to the next, and him to the next, and come back to the man who issued the notice?

A. You mean, through the same parties that were originally involved in the ring?

Q. Yes, if that ring still existed?

A. Well, the ring would not exist; the parties might still have the trades open.

Q. But the case I have put is where the ring still exists?

A. Well, I can't answer that because there would not be such a case, the rings would never exist.

Q. Why not?

A. Because the minute one party to that ring refuses to settle the ring is off just the same is if it had not been made.

Q. But the sales are there just the same?

A. But the parties would go on, these parties would likely go on and settle their sales in some other way, settle them with somebody else.

Q. How could they before the day of the delivery?

A. They could leave this man out you know, some other party might intervene and they might settle through him, and they might settle everything, the ring would be busted when one man refused to settle.

984 Q. Very well, but there was a perfect ring and there was one man who refused to settle? A. Yes sir.

Q. He had the property sold, and he had the same property for the same delivery bought? A. Yes.

Q. Now I want to know how a delivery is made when the same man has the same property bought and the same property sold? A. How it is made?

Q. Yes, how is the delivery made to that man?

A. Well, his purchase and sale would not necessarily have any relation to each other at all; if he has got it bought from A, A would deliver him the property.

Q. Yes?

A. If he has got it sold to B and wants to deliver it to him, he will.

Q. Yes?

A. I don't see the application of the question, I don't understand.

Q. I don't know that it is necessary that you should?

A. I can't answer it without I understand.

Q. We have got a man standing up there in the ring, he has got the same property both bought and sold?

A. That does not make a ring.

Q. Well, it does if there is a ring, we have got a ring now?

A. Yes.

Q. He has got the same property bought and the same property sold? A. Yes.

Q. And there is a ring that goes right around?

A. Yes, and he refuses to settle.

Q. He refuses to settle?

A. Well, then there is no ring, the ring is busted.

985 Q. But there is a ring?

A. But there is not when he refuses to settle, there is no ring.

Q. Is there no ring there unless they all settle by it?

A. Unless they all agree to it, there is no ring.

Q. There isn't any ring of the other half a dozen men?

A. None whatever.

Q. For all that property bought and sold right around?

A. There might just as well not be from the fact that there was—it is what you call a ring if one party refuses to settle the whole thing is off and there is no ring.

Q. Yes?

A. And they are just where they were before they found out that there was no ring.

Q. Well, now that exists on the day of delivery? A. No.

Q. How is the delivery made?

A. Well, it would not—would not if they had—if all those trades were still open. If all those trades on delivery day was still open and this party had refused to settle, puts out the property for delivery, it is not a chance in a million that it would go through the same process that this ring went through involving the same people.

Q. But I say, suppose the ring existed on the day of delivery?

A. Well, I can't answer that, I can't suppose something that never happens, never knew such a thing to happen.

Q. Never knew of such a thing?

A. No sir, never in the world.

Q. In other words, they are all settled up before delivery day?

986 A. Yes, but some of these trades that are involved in this ring would most likely be settled if there was any time elapsed between the refusal to settle and the time of delivery, some of these trades involved in this ring originally would be settled any way.

Q. By other rings?

A. Yes, it is a cinch almost, that they would.

Q. That is to say, there is not one chance in a million that that ring that was formed would last up to delivery day?

A. No, if it is any time prior—any appreciable time prior to delivery day, there is no chance that it would.

Q. Well, if it was a week before?

A. Well, it would probably be settled.

Q. And would be settled by different rings? A. Yes.

Q. While you were in business did you keep a book in which was recorded, the deliveries that you made? A. Yes.

Q. What did you call that book?

A. I kept the deliveries in the same book that I kept the settlements.

Q. Well, did you keep them separate? A. No, no sir.

Q. Did Logan keep a separate book in which he entered the items of delivery that were made? A. I don't think so.

Q. Were those items entered in the regular option book with all the other items? A. The deliveries?

Q. Yes?

A. Well, the original trades would be entered in the option book.

Q. And the results of those trades would be entered there too?

A. If they were trades entered in the option book and any particular trade is settled by delivery, it would not appear in the option book.

987 Q. Where would it appear?

A. It would appear in the settlement book, in the ring book where they make up the clearing house sheet.

Q. They would make rings by delivery?

A. I have explained to you.

Q. In the ring book?

A. I have explained to you that except the party who delivers the property and the party who pays for it, all the intervening people in the delivery settle their differences through the clearing house in the same manner as a ring.

Q. And you call that notice a delivery, although it passes through the hands of half a dozen different people?

A. Oh, yes sir, yes

Q. And the property is finally delivered from one man to another at his office? A. Yes.

Q. How many of those people in that transaction give checks or pay for the whole of the commodity?

A. Only the party with whom it finally stops.

Q. He is the only one that gives a check?

A. He is the only one that gives a check.

Q. Then all the others outside have not received or paid for that property at all?

A. No, the notice of delivery has passed through their hands.

Q. It is just a notice? A. Yes.

Q. But they have not had the property? A. No, sir.

Q. And have not had the warehouse receipt and have not paid for it? A. No.

Q. Do you know any such thing on the Board as transferring trades? A. Yes.

988 Q. For what purpose are those transfers made?

A. Well, they are sometimes made from—scalpers transfer trades to get rid of the Government tax, that is the principal part of the transfer.

Q. Does any body do that but scalpers?

A. Well, I don't know of anybody else, I presume they may.

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Q. Isn't it quite common thing up there to make a transfer of trade? A. Not for commission houses.

Q. Among members of the Board?

A. I see scalpers do it, it is common in that way.

Q. Do they transfer the trades because they do not intend to receive and pay for the stuff?

A. Well, they like to escape that trouble sometimes.

Q. If he transfers the trade, that closes it so far as he is concerned right off?

A. As far as he is concerned, yes.

Q. Your present house, or the house that you are with at the present time, did it have deals in December wheat?

A. Did it have trades in December wheat?

Q. Yes? A. Yes.

Q. About when did they commence to trade in December wheat?

A. Oh, I can't tell you now; certainly as far back as last summer sometime, August or July.

Q. And since that time, have they had deals for large amounts of December wheat? A. Yes.

Q. Amounting to how much, would you say?

A. Well, I could not say; I haven't any idea, a great many million bushels.

989 Q. The day for delivery of December wheat was what day? A. First day of delivery was Monday.

Q. Last Monday? A. Yes.

Q. How much wheat did your firm receive and pay for that they had contracted to take for the December delivery?

A. I don't think we paid for any.

Q. Then you did not receive any?

A. Well, the notice might have gone through our hands for some, but I don't think we paid for any wheat, I don't recall that we did.

Q. Take corn in the same way, did they deal in December corn? A. Yes.

Q. How extensively? A. A good many million bushels,

Q. How much corn did they receive and pay for on last Monday?

A. Well, I don't remember exactly, possibly Monday and—well on Monday?

Q. Yes?

A. I don't think we paid for any corn on Monday.

Q. Tuesday?

A. I think Tuesday we paid for fifty or a hundred thousand bushels, something like that.

Q. Out of how many millions? A. Oh, I don't know.

Q. How? A. I don't know how many.

Q. How many would you think?

A. I don't know how many millions of December corn we have traded in this year, but a good many millions.

Q. Did that firm also deal in December oats? A. Yes.

Q. How many oats did they receive and pay for on Monday?

A. I don't think we received any.

Q. Didn't pay for any? A. No.

Q. Did they deal in provisions for the December option?

A. Yes--December?

990 Q. Yes? A. I think not.

Q. For what previous month did they deal in options in provisions, September?

A. Well, there was a small trade in all the months of the fall months, but for November—for October, practically there was very little until January trading, mostly in January and May now. The volume of the provision trade all through the fall is very small, nothing doing hardly.

Q. Mr. Crosby, in transfering trades, do you know whether the members of the Board use a form like the one I hand you? (Handing witness a paper.)

A. Well, I think some of the scalpers have forms like that but I doubt whether it is a common thing or not.

Q. In what way are trades transferred if they have no form like that?

A. Well they are often transferred by a verbal process on request.

Q. And upon the floor? A. Yes.

Q. In what way, Mr. Crosby, is a delivery notice made out with reference to the form of exhibit—

A. How is it filled out with reference to this form?

Q. Yes.

A. Well, in the first place this notice contains the number of the delivery notice, the office of the party making the notice, and the date; it is addressed to the party to whom he delivers the notice then his notice is supposed to contain the date of the warehouse receipt, the warehouse in which the grain is in, and the number of bushels in each receipt and then the accrued storage is entered on it.

991 Q. Then it is signed?

A. Then it is signed by the party delivering it.

Q. And as that notice is delivered from one to another what is put upon the back of it?

A. Every party passing—through whose hands this passes enters on it the party to whom he delivers and the time at which he makes the delivery.

Q. And the price? A. And the price, yes.

And thereupon at 12:50 o'clock P. M. of said day an adjournment was taken to two o'clock P. M. of the same day, December 4th, 1901.

992 Two o'clock P. M., December 4th, 1901, parties met pursuant to adjournment.

William S. Crosby, a witness on behalf of the defendant, resumed the stand for further Direct Examination, by Mr. Jenks, and testified as follows:

Q. Mr. Crosby, the private wires that you stated Logan had, where did they run from and to?

A. Well, they made connections from Logan's office in Chicago at various points about the country, many points.

Q. State some of them?

A. Well, Boston, New York, Philadelphia, Pittsburg, Cincinnati, Louisville, Memphis, New Orleans, points down through Texas, many points in Texas, Arkansas, St. Louis, Kansas City, Omaha, Des Moines, Iowa, Minneapolis, LaCrosse, St. Paul, Duluth, San Francisco, Los Angeles, Portland, Seattle, Tacoma, Spokane, is that enough?

Q. That is enough if those are all the points?

A. Those are the principal points.

Q. What other members of the Board of Trade doing a commission business also had private wires to your knowledge?

A. Well, my knowledge would be of a general character in that respect, matters of common information, but there were a dozen I suppose, other houses.

993 Q. Can you name them?

A. Well, J. F. Harris & Company, Newmyer & Bodman, Schwartz Dupee & Company, Lamson Brothers & Company, Comby & Company, McIntyre and Warden, there were other houses down the street, I don't recall them.

Q. The other houses that you have mentioned, do you know where their wires ran from and to, or where any of them did?

A. No, only just the general understanding I have in regard to it; all of them had wires to New York, or were supposed to have.

Q. Now the successors to the business of Logan, do they keep some wires? A. Some wires.

Q. And over all those wires these commission men received orders, did they?

Mr. Robbins: Objected to unless the witness knows of his own knowledge.

Mr. Jenks: I mean the wires connected with the houses that you were connected with. A. Answer?

Q. Yes, he don't object to that? A. Yes.

Q. And transacted business with their customers over all those wires? A. Yes.

Cross-Examination

By Mr. Robbins:

Q Mr. Crosby, how does the system of settlement by off-sets, or as it is sometimes called, a ring, that you have described in your testimony differ from the system of closing future contracts by off-set or ring prescribed by the rules of the Board of Trade? A. How does it differ?

994 Q. Yes? A. I don't understand that it differs at all.

Q. Well, how does the system of deliveries through this notice that you have described in your evidence differ from the system of delivery that is provided for by the rules of the Board of Trade? A. I understand it is the same.

Q. You spoke of closing out a customer when his money ran out? What if any steps do you take before closing out a customer for want of margins?

A. Well, if the means of communication with the customer are such that we can notify him, ask him for additional protection, we usually do it.

Q. And if he responds do you close him out? A. Oh, no.

Q. If he does not respond, how do you close him out, by going up on the floor and selling it? A. Precisely.

Q. You don't mark his trade off? A. No.

Q. Your books. These contracts for future delivery that are made on the Board of Trade in the time of business, they cover the contracts which are ultimately settled by actual delivery as well as the contracts that are settled by ringing? A. Precisely, there is no difference between the original trade.

Q. The trades that are made in the wheat pit for future delivery, some of them are settled by deliveries? A. Yes.

Q. This scalping of trades that you have described here are the contracts of the same character as those other future contracts? A. Precisely.

995 Q. All of one character are they? A. Yes sir.

Q. Are they made in the same way in the pit?

A. Yes sir.

Q. By the same form or expression? A. Same way.

Q. Is there any way by which anybody can tell at the time the trades are made in the pit, whether they are trades that will be completed by delivery of the property, or whether they are trades that will be closed by settlement by ringing or off-set or whether they are scalping trades?

A. I have never known any way by which you could discriminate between them.

Q. These quotations that are sent out register every change in the price in the pit, do they not? A. Supposed to.

Q. Is there and way of telling whether these changes [are] quotations are the results of transactions in which deliveries will be made or are made in transactions or contracts which will be subsequently settled by ringing?

A. I would not suppose there was any way of telling.

Q. Do you know of any way? A. No.

Q. Is there any way of telling whether those would be contracts completed by delivery or whether they are scalping transactions? A. No, sir.

Q. Is there any way that you know of by which the quotations that arise from scalping can be separated from the quotations that arise upon other future contracts? A. No.

996 Q. Or by which the quotations that are based upon contracts which are closed by delivery can be separated from the quotations that are based upon the contracts that are subsequently settled by off-set under the rules? A. No.

Q. These scalping trades are made just like the other contracts for future delivery at a future month?

A. The time the contract is entered into—the contract entered into is precisely like other contracts.

Q. When a man makes a sale and then the same day by way of scalp makes a purchase, does that close the trade as far as he is concerned?

A. That closes his risk in the market as far as the fluctuations in the market are concerned.

Q. It is then a contract with different members of the Board of Trade? A. Yes sir.

Q. Is there any way by which he can then get out of the transaction and avoid a delivery without the consent of the other parties to his contract? A. No.

Q. Is there any way by which he at the time he makes those two contracts can know whether either of them will be completed by a delivery or settled by a ringing?

A. He might make an agreement with the parties at that time but I have seldom if ever, known it to be done.

997 Q. As a rule, he bids in the same way as the others do? A. Precisely.

Q. And his trades are entered to himself with the other party to the trade? A. Yes.

Q. And they go through the regular form? A. Yes sir.

Q. And unless the parties consent to an earlier settlement deliveries must be made as the result of those trades?

A. Yes.

Q. Are any trades made in the wheat pit which would not result in delivery if the parties should not subsequently resort to this ringing system? A. I never knew of any.

Q. Wherein does the ring book, that you have described as used in the business of yourself and the firms with which you

are connected, differ from the ring book that is prescribed in rule 22, of the rules of the Board of Trade?

A. Well, let's see rule 22? Is this rule 22, here? Is this the rule? (Indicating.) Which section of the rule is it?

Q. The second paragraph of section 6? A. Section 6?

Q. The second paragraph, section 6 is what I refer to of rule 22? A. It is the same form that is prescribed in that.

Q. You speak of hedging. Do you refer to the hedging that comprises the class of transactions where persons who hold cash property—hold and are carrying cash property execute contracts upon the Board of Trade for future delivery of the same quantity of the property they have for a future month?

A. Well, in a general way, yes. My idea of the correct condition of which the term—to which the term hedging
998 applies, would be to people in other markets in the country who have elevators in the country and they have cash grain in their elevators and they want to minimize their risk in holding that grain, and they sell in some other market for future delivery against the property that they are carrying in their warehouse, I would not consider the term hedging, to apply to warehousemen here in Chicago so much.

Q. Do warehousemen in Chicago resort to a similar practice when having property or grain on hand to sell for a future month? A. Yes sir.

Q. Do you call that hedging?

A. Well, I don't know that I would.

Q. Well, whether hedging or not, is that done in a large scale? A. Oh, yes.

Q. Well, upon that class of contracts are deliveries made?

A. Sometimes.

Q. Are not deliveries in large quantities made frequently on that class of contracts? A. Sometimes.

Q. In Chicago? A. Sometimes.

Q. And that class of contracts are made in the pit in the same way as the others? A. Precisely.

Q. And the elevator men in that class of contracts have the grain on hand that they sell for future delivery?

A. In that class of contracts they do, yes sir.

Q. Do you also cover in your form "hedging" contracts where—cases where persons have corn cribbed in the country and are waiting for it to get dry enough to get to market?

A. Yes.

Q. And sell for future delivery against it? A. Yes.

Q. Well, in that class of contracts, is the corn shipped to Chicago and then delivered upon these contracts?
999 A. Sometimes.

Q. Is that true as to large quantities of corn?

A. Sometimes.

Q. Is hedging undertaken by millers, large millers who have made contracts for future delivery of flour?

A. Have sold flour for future delivery?

Q. Yes? A. And bought wheat against—

Q. Yes? A. Against that contract?

Q. Yes? A. Yes sir.

Q. Do millers who are buying in this market for milling purposes make contracts for future delivery? A. Yes.

Q. Do they on that class of contracts receive the grain?

A. Sometimes.

Q. And do they do it in large amounts at different times?

A. I suppose the aggregate of that sort of trade is large.

Q. And is that class of contracts made in the business on the Board of Trade in the same manner that the others are?

A. Yes.

Q. And is there any way of telling that class of contracts at the time they are made from the other class?

A. No, I suppose one party making the contract would know what the contract was about.

Q. I mean outside of the party to it? A. No.

Q. Anybody standing in the pit, could he tell about that transaction? A. No.

Q. Are the quotations based upon that class of contracts the same as the quotations from the other class of contracts?

A. The same.

Q. Could not tell the difference? A. No, sir.

Q. Do packers resort to this practice of hedging?

A. The same as elevator people, yes.

1009 Q. The packing houses of Chicago sell their products for future delivery on the Chicago Board? A. Yes.

Q. And when the contracts mature, are the deliveries of the manufactured product made upon those contracts?

A. Sometimes.

Q. Is the volume of business large? A. Yes.

Q. What is the purpose of doing that, of making those hedging contracts by packers?

A. Selling for future delivery?

Q. Yes?

A. Well, there are various reasons; nearly all packers are also warehousemen and by selling for future delivery, even though the product is ready for immediate delivery, they sell on a basis which pays them for carrying the stuff as warehousemen in the meantime they get what would be equivalent to the storage rate from the parties, then it takes some kind of hog products, it takes some period to cure them; the packer goes on the market to-day and buys hogs, if he is going to make so many thousand pounds of ribs with those hogs they are not ready for immediate delivery but at the same time he wants to

secure himself from risk, and he sells so many thousand pounds of cured ham for delivery at some future time.

Q. And in many cases delivers the products of those hogs on the future contract? A. Yes sir.

Q. When they mature? A. Yes sir.

Q. And that contract is done in the provision pit on the Chicago Board of Trade? A. Yes.

Q. That contract for future delivery [—] in the same way that other contracts for future delivery are made in the pit?

A. Precisely.

1001 Q. Does your house have business with all these classes of cases?

A. Well, with millers and packers, do you mean?

Q. And corn-cribbers and elevator men?

A. In a general way, yes; corn-cribbers have lost their occupation this year, I guess the rest of them are all doing business.

Q. You don't mean to say Mr. Crosby, that you know of 50 blackboards in the City of Chicago in the offices of Board of Trade men? A. At the present time?

Q. Yes?

A. That was not the question Mr. Robbins, but that—

Q. I know it is a little— A. —for several years.

Q. Well, at the present time, how many do you know of?

A. Well, I would have to stop and count up, I suppose, I don't know all that there are. Well, let me see? In the offices of members of the Chicago Board of Trade. Well, there are a lot of brokerage houses down on LaSalle street; most of them are members of the Chicago Board of Trade; some of them don't know whether they are not; I suppose I know of 25.

Q. If one party refuses to join in the ring in the way you have described this morning, what happens to his trades?

A. To his trades?

Q. Yes? A. Nothing happens to them.

Q. Well, what becomes of them?

A. Well, if he does not choose to settle them up in the way of a ring before the maturity of the contract the property has to be delivered.

1002 Q. That is if he adheres to his refusal not to join in the ring it results in delivery? A. It must.

Q. That is necessarily so, isn't it? A. Yes sir.

Q. And the custom and the way business is done?

A. A delivery or default and the penalty that follows.

Q. Stop orders may be given and frequently are given to close transactions at a profit are they not? A. Oh, yes.

Q. The trades of your customers may be settled as between yourself and your customers and still remain open as be-

tween yourself and the other members of the Board of Trade with whom you have made them? A. Oh, yes.

Q. The settlement between you and the customer has nothing to do with your settlement with another member of the Board of Trade? A. None whatever.

Q. Your settlement with other members of the Board of Trade depends upon the consent of the other member to make the settlement does it not?

A. The member with whom we have the trade.

Q. And without their consent to a settlement, no settlement is made? A. No.

Redirect Examination

By Mr. Jenks:

Q. Mr. Crosby, how extensive has been your transactions on the Board by way of hedging trades for your customers?

A. Very large.

Q. Has it continued down to the present time?

A. Yes sir.

1003 Q. Do you know whether a transaction is made as a hedging one or not, when made?

A. Well, when an elevator man sells wheat to us, I don't go down there and see the wheat, but when we are selling wheat for a company that has a line of elevators in the country, we assume that they are hedges.

Q. How much wheat have you ever delivered on those hedging deals, compared with the whole amount of the deals that you have managed? A. Very little.

Q. And by very little you mean what per cent?

A. Oh, I don't know, very small per cent.

Q. Would it be less than one-tenth of one per cent?

A. I don't know, that is pretty small.

Q. Is it pretty small, but isn't that a little larger than you actually make deliveries on?

A. Oh, well, I could not testify to such a fine point as that.

Q. Well, one-half of one per cent, then?

A. No, make it three per cent.

Q. Well, do you think it would amount to three per cent?

A. No, I don't believe it would.

Q. Mr. Crosby, as a matter of fact, the man who has actual property on hand and makes a hedging deal on the Board, in disposing of his actual property shipping it to some other market or selling it at his elevator or packing house, he pays no attention to the hedging contract that he has had on the Board of Trade, does he? A. Pays no attention to it in what way?

Q. In disposing of his actual property somewhere

1004 else?

A. I suppose he considers his hedging trade in making the price at which he disposes of his property elsewhere, he takes that into consideration naturally.

Q. Well, what I mean is, does the fact that he has a hedging contract on the Board of Trade here prevent his shipping his property to some other market or selling it to be shipped somewhere else? A. Why, it does not.

Q. As a matter of fact, these packers with whom you have had anything to do by way of making hedging deals usually ship their commodities somewhere else do they not?

A. I would not think that they usually do, I don't know what the percentage of that would be or what the condition would be.

Q. Well, you know this, that if a man makes a hedging contract because he has the actual stuff on hand that he does not deliver here three per cent of the stuff that he sells by way of a hedge, you know that, don't you?

Mr. Robbins: He has not stated that, he has stated three per cent of his whole trade?

A. Grain I said.

Mr. Jenks: You need not pay attention to Mr. Robbins?

A. All right.

Q. This is my put in at the present time? A. All right.

Mr. Jenks, go on.

Q. Don't you know as a matter of fact that a man
1065 who makes hedging contracts on the Chicago Board of Trade, giving the commodities in hand at the time does not deliver in Chicago on those hedging contracts, three per cent of what he has sold by the hedge? A. Any man?

Q. Any man? A. No, I don't know that.

Q. Pick out a man who does not?

A. I think the packers do deliver more than that, that is my impression.

Q. Who, for instance?

A. Well, I would say that—I will say that—

Q. Take Armour & Company, they are pretty good sized packers are they?

A. Armours are big distributers of stuff also besides big packers.

Q. I know it?

A. All packers are not distributers of product. A good many of them market more stuff you know.

Q. Take Armour and Company and take their product that results from their packing houses, do you know of their ever having made hedging deals on the Chicago Board of Trade?

A. Well, it is currently supposed they do, I don't know.

Q. Well, is it currently supposed that they ever deliver anything on those contracts? A. Oh, yes, certainly they do.

Q. Now what per cent would you say they deliver?

A. I don't know, don't know; I am not familiar enough with the details of the packing business to answer those questions, Mr. Jenks.

Q. You know it as a matter of fact?

A. Here is a man that is coming right after me that could tell you all about it, now you go after him.

1006 Q. He can, eh? Who is he?

A. A wrong Mr. Wright.

Q. What is his name? A. Mr. Wright.

Q. Well, I didn't know who the man was that was coming right after you? A. Well, he is coming right after me.

Q. As a matter of fact, Armour and Company are extensive shippers to other places of their products, are they not?

A. Supposed to be.

Q. Now who is the packer in this town that is not?

A. Well, I have told you that I am not familiar enough with the packing interests and the different packers and their methods of doing their business to answer that question.

Q. Well, are you familiar enough so that you can say that any amount was ever delivered on hedging contracts by packers? A. Oh, yes.

Q. Do you know of a single case where anything was delivered by a packer on a hedging contract?

A. Well, I know where deliveries have been made by packers out of their own houses on sales that they have made on the Board of Trade.

Q. Well, where is one?

A. Through this hedging, I have had plenty of them.

Q. That is you have received?

A. I have received from packers the delivery of provisions in their own warehouses or their own places on their own sales; now whether that was a hedging sale or they had the property in the warehouse at the time they sold it or not,

1007 I don't know.

Q. Now you never did receive five per cent of the stuff that you bought did you? A. No, I don't think I did.

Q. So that you can say that they never delivered to you five per cent of the stuff that they had sold to you on hedging deals? A. Now, you see your two questions don't gibe?

Q. Yes, they do gibe, because you said you didn't know?

A. I will tell you why?

Q. Whether they sold on a hedge or any other way?

A. One question applies to all the property I have ever bought which includes grain; the other question applies to what the packers have delivered on their sales; that is what you

are talking about, and I say that I think the packers deliver a larger per cent on their sales—that there is a larger percentage of provisions delivered and the packers deliver a larger percentage than what is done in the case of grain in this market.

Q. Did they ever deliver to you five per cent of the provision that you had bought?

A. Well, I don't know, I don't know.

Q. How long since they have delivered anything to you?

A. Well, a month or six weeks I guess.

Q. Was a delivery made to your house a month or six weeks ago?

A. I think there were some deliveries made about that time.

Q. Who made the deliveries? A. Oh, I don't remember

Q. Do you remember what was delivered?

1008 A. No, provisions of some sort, I don't know.

Q. Don't know what?

A. I think it was—well, I don't remember, very little of it.

Q. Now take elevator men who have elevators in the country and they make hedging deals here on the Chicago Board of Trade, have you any in mind whom you knew were making hedging deals at the time they were made?

A. Simply by inference.

Q. Well, now when they make a hedging deal, they deal in the commodity for future delivery, and if it is grain it is names in the rules and practices of the Board of Trade as a certain grade, isn't it? A. Yes.

Q. In the country we will say a cribber of corn has a whole lot of it in a crib; it is cribbed in the ears isn't it? A. Yes.

Q. And if he makes a hedging deal against it on the Chicago Board of Trade, that hedge is made as to what grade of corn?

A. Number 2 usually.

Q. And how often does that cribbed corn come up to grade No. 2 usually?

A. Oh, I don't know it depends on the condition of the crop, general quality of the crop.

1009 Q. Can that corn in the car be delivered in Chicago on that hedging deal? A. No.

Q. Isn't it often the case that wheat in store in the country does not come up to grade? A. Yes.

Q. Can that wheat be delivered in Chicago on a hedging deal?

A. Not—Any delivered on a hedging deal must be of the grade contracted for in the sale made.

Q. You spoke of millers as parties hedging on the Chicago Board of Trade. Have you in mind any miller who does that or ever did it? A. Yes.

Q. Where was his mill? A. Minneapolis.

Q. What did he sell by way of hedge? A. Sold wheat.
Q. Wheat? A. Yes.
Q. Do you know of his ever delivering any wheat on that hedging transaction? A. Do you mean shipping it in here?
Q. Shipping the actual wheat in here and delivering it on the hedge. A. I don't recollect any.
Q. The millers when they hedge wheat and have the wheat on hand manufacture it into flour don't they at their places?
A. Supposed to.
Q. And then they ship that flour wherever they please?
A. Yes.

1010 William E. McHenry, a witness on behalf of the defendant, resumed the stand for further direct examination by Mr. Jenks, and testified as follows:

Mr. Jenks: Mr. Robbins is not through with the cross-examination yet.
Mr. Robbins: No, but you asked for some books, finish up and then let us finish up.

Mr. Jenks: Mr. McHenry, have you brought some books in with you? A. I brought some books, yes sir.
Q. Some means two. How many books did you bring?
A. Two.
Q. What are they called in your office?
A. One of them is what is called the option book, and I want to say right here, Mr. Jenks, that my present book is in use at the office, so I brought one simply as a sample which I presume is all you wanted.
Q. This book that I have, is this called the option book?
A. Yes sir.
Q. And covering what period of time are items in this book?
A. Oh, I can't tell you without looking that all over. It goes back a long ways.
Q. But about them, I don't care particularly.
A. Oh this book is away back in 1889, 1893, along in there. I brought this book along simply as a sample of what is known as an option book, Mr. Jenks.
Q. Yes. A. That is what you wanted, I presume?
Q. All right, do you keep the same kind of a book in your business now? A. Yes sir.
Q. And during the whole time that you were in business did you have the same kind of a book kept in substantially the same way? A. Yes sir.
Q. This option book that we have in front of us is kept in your business for the purpose of showing option deals?
A. Yes sir.

Q. I had a place there I was going to look at?

1011 A. I will tell you why I speak about this, Mr. Jenks. I want to explain this before I go any further. My own book that I am using at the present time is in use at the office.

Q. Yes, you stated that?

A. Now this is a book by which I can illustrate just as well the point [the] I judge you are trying to make on this book.

Q. Well, you don't know what that is, do you?

A. I can imagine pretty nearly.

Q. Well, what is it?

A. I am a pretty good mind reader there and I know.

Q. What is it? A. You are trying to find out from me—

The Master: Answer his question, Mr. McHenry.

A. All right.

The Master: I think you had better answer the questions that I put, Mr. McHenry.

A. Well, what is the question, then?

Mr. Jenks: Are all of the option books that have been kept and are now kept in your business substantially in the same form that this one is in front of you? A. Yes sir.

Q. Is it a fact that the option book kept by you has at the top of it, in—

A. I want to stop you right here and simply say that this book is brought in as a form, and not as a book of the trades.

Q. Yes, I know, it I know it.

A. You can see that very plainly by the heading of it.

Q. Is it—

A. Now if you want my actual book that I am doing business with now, I will bring it to you later.

Q. I don't care about that if you will answer the questions Mr. McHenry. A. All right sir.

Q. I don't want to pry into your business at all.

A. No, you can't.

Q. I don't want to.

A. I know that, Mr. Jenks very well.

Q. But I want to know if the option book has on the left hand page, printed at the top, the word, "bought?"

1012 A. Yes sir.

Q. And on the right hand page is printed at the top the word "Sold?" A. Yes sir.

Q. Then I want to know if in your making an entry there on the Bought side, you put down the names of the member of the Board of Trade from whom you bought the commodity?

A. Yes sir.

Q. And do you also put down what the commodity was?

A. Yes sir.

Q. And then on the left hand side of the left hand page is there a column ruled off that has at the head "Date?"

A. Yes sir.

Q. And next a column ruled off which has at the head, "Number?" A. Yes sir.

Q. And next a column which has "Bought of" at the head?

A. Yes sir.

Q. And next a column which said "Quantity" at the head?

A. Yes sir.

Q. And next a column which at the head, "Terms?"

A. Yes sir.

Q. And next a column which says at the head "Price?"

A. Yes sir.

Q. And next a column which says "Account" at the head?

A. Yes sir.

Q. And next a column which says at the head, "Folio?"

A. Yes sir.

Q. And next a column which says "Ring No.?"

A. Yes sir.

Q. And next a column which says at the head "Trade No.?"

A. Yes sir.

Q. Now in filling that out in the first column, you put the date of the purchase? A. Yes sir.

Q. The next column has the figures for numbers, what do those numbers relate to? A. Numbers naught to 49.

Q. On one page?

A. On one page which consists of 250,000 bushels on a page.

Q. Now in the place—in the space of "Bought of" as this book has, you have the name up at the top of the page?

A. Yes sir.

1013 Q. Was that the place for the name of the person from whom you bought? A. Yes sir.

Q. In case you had bought 250,000 bushels of wheat from one man, in one transaction, the items would be set down under the heading "Quantity" in five thousand bushel lots?

A. Yes sir.

Q. Clear down? Then the next column which has at the head "Terms" you would put down the option, the month?

A. The month for which the property was bought.

Q. Yes? A. Yes, sir.

Q. Then in the next column you put down the price at which bought? A. Yes sir.

Q. Then in the next column which is headed "Account" what do you put in there?

A. Account of the customer by initial or name.

Q. Do you always put that in? A. Invariably.

Q. In the next column which says "Folio," what do you put in it?

A. That is a folio page of the customer's account in my customer's ledger.

Q. Then the next column which is headed "Ring number" what do you put in it?

A. There should have been put in there and ordinarily is put in the number of the ring to correspond with the ring book, what is known as the ring book.

Q. And when do you put that in, after the ring is made?

A. Yes sir.

Q. Then the next column which is headed "Trade No.," what do you put in it? A. Well, that I never used at all.

Q. What is that intended for? A. Well, I give it up.

Q. It is not intended for your customer who does business by number instead of name? A. No sir, not with me.

Q. Then, on the right hand page, which is the "Sold" side, that is marked off in columns exactly the same as the left hand page, isn't it? A. Yes sir.

Q. And you put down the items there in the same way ex- except that those are sold items? A. Yes sir.

1014 Q. Now that is the case all the way through with the option book?

A. Yes sir, this is a sample or a copy practically of the option books in use then and in use to-day in the trade, with the exception that possibly the columns may be changed a little bit, but the result is the same thing exactly.

Q. How about the ring book? Did you bring one?

A. Yes sir, this is my present ring book, that I did not happen to want to use this afternoon.

Q. And this present book covers what period of time?

A. From May 31st to December 3rd, inclusive, May 31st, 1901, to December 3rd, 1901, inclusive.

Q. December 3rd? A. That was yesterday.

Q. Does that book contain a statement of all of the transactions you had in any commodities on the Board of Trade from the commencement of the items in the book down to the first day of November, 1901?

A. No sir, for the simple reason that I did a great deal of brokerage business and gave up the name of the principal at the time I made the contract under the rules of the Board of Trade. This book—

Q. On what books did you make those entries?

A. I have a separate book for that purpose called a brokerage book.

Q. Well, where you did that kind of business it was done with some other member of the Board of Trade, but you gave

up the name of your customer instead of having trades put down in your own name? A. Yes sir.

Q. So that whether those trades were rung up or deliveries made you knew nothing about it and cared nothing about it?

A. Nothing whatever.

Q. Then aside from those trades, where you had no contract entered in your book at all,—

A. Nothing except a memorandum to charge the amount up with the brokerage and the property that I traded in, either bought or sold.

of

1015 Q. That is one-half the commission, the full commission?

A. No, sir, it is twelve and a half cents a thousand, on brokerage, 62½c on every 5000 that is, where I give up the name of the principal.

Q. Well, was the name of the principal, another member of the Board, or was it an outside party? A. An outside party.

Q. Another member of the Board? A. Yes sir.

Q. Aside from that, does this ring book contain a statement of all of the transactions that you had from May 31, 1901, down to the first day of November, 1901?

A. Yes sir, it contains—it contains the list of all the settlements that were made on contracts made by me on the Board of Trade.

Q. Between May 31, and November 1, 1901, did you have any transactions for your customers which you might call a commission or an option business which did not appear on this book?

A. Why, I might have had plenty of that might have been made for my customers that are not yet closed and would not appear on this book at all.

Q. Well, have you any? A. Yes sir.

Q. Did you immediately, before November 1st, that are still open?

A. I could not answer that question without reference to my books further.

Q. Well, I will go a little further. Have you owned any wheat, any December wheat, that don't appear on this book?

A. No sir.

Q. Have you owned any December corn that don't appear on this book? A. No sir.

Q. Have you owned any December oats that don't appear on this book? A. No sir.

Q. Can you tell how much you delivered of corn, wheat and oats which you contracted for between the 31st day of May, 1901, and the 31st day of November, 1901?

whole

A. I could not tell you without going over this book
1016 to see what was delivered and what was not.

Q. Well, we will take it of December commodities that you dealt in? A. Yes sir.

Q. There were no deliveries at all before the 2nd day of December were they? A. No sir.

Q. Then on the 2nd day of December, how many of all the contracts you had made between the 31st day of May remained open? A. Ten thousand bushels.

Q. Of what? A. Of December wheat.

Q. And nothing else? A. Nothing else.

Q. How much remained open of December corn?

A. Nothing.

Q. How much of December oats? A. Nothing.

Q. All of those transactions then had been rung up before the 2nd day of December? A. Yes sir.

Q. Now have you any contracts still open for December wheat? A. Yes sir.

Q. How many? A. One, five thousand.

Q. Which way is that going? A. I have it sold.

Q. Now that is for you to deliver then if you don't ring it up this month? A. Yes sir, I must.

Q. Why didn't you deliver that on the 2nd day of December?

A. I didn't have the wheat on hand for the customer that I sold it for and he didn't have it bought.

Q. You didn't have it on hand for anybody did you?

A. Didn't have it on hand for anybody or I certainly should have delivered it.

Q. That is just what I wanted to get at. Why would you have delivered it on the 2nd day of December instead of holding it for the whole month if you had it on hand?

A. I would have delivered it to save the interest, the insurance and the storage.

Q. And that is the object that everbody has in making the delivery on the first day of the month or as soon as he can deliver isn't it?

A. I don't know anything about anybody else but
1017 myself, that is my object.

Q. And you can't guess as to anybody's else?

Mr. Robbins: Objected to.

Mr. Jenks: Now this book is called the ring book, and you mark on the outside of it "Rings" (Indicating a book produced by the witness).

A. Yes sir.

Q. The inside of the book is ruled off, vertical rules, so as to make six or seven spaces on each page?

A. Horizontal rules, I guess you will find, if that is what you are referring to, fifty-one or fifty-two of them.

Q. I mean these. (Indicating.) A. Oh, yes sir.

Q. So as to make— A. Six or seven, that is correct.

Q. And it has ruled off on each page horizontal rulings about twelve on each page? A. Yes sir.

Q. And in the left hand space of the rulings in each horizontal space are printed figures? A. Yes sir.

Q. Numbers of something or other. What are those figures for? A. They are to designate the number of the ring.

Q. And the number of the ring merely indicates the number in your own business? A. No sir.

Q. Have other members of the Board the same number of rings?

A. I know nothing about anybody else'- books but my own. This number that you refer to on the left, here, Mr. Jenks, refers to the number of the ring that can be entered on the option book as with certain other contracts either bought or sold, having been settled according to these numbers as a guide, so to speak.

Q. Well, is a mere guide to you? A. Mere guide to me.

Q. It has nothing to do with anybody else?

A. No sir, none whatever.

Q. And it has nothing to do with the ring, so far as anybody else is concerned? A. No sir.

Q. Is it just for your own convenience?

A. For my own convenience, absolutely.

1018 Q. Then in making out this ring book, in order to show where the ring is and who are in it, what do you put down on this book?

A. If you will allow me, I will turn to something that is recent. Here is a ring, Number 621, where I had five thousand bushels of May wheat sold to Ware & Leland, at seventy-six and three quarters. I had it bought of them at seventy-seven and a half, on which I would owe them through the clearing house under the rules of the Board of Trade, three quarters of a cent, or thirty-seven dollars and a half.

Q. Well, now, just state as to that item as it appears on the page of your ring book, that transaction?

A. On the top of that one particular item, "76 3-4 W. & L." the line below, that, "77 1-2" on the left of the figures "621. 5,000."

Q. 5M? A. 5M.

Q. Now it does not say what; you guess that from the price, don't you, so that you know what it was, you know that from the price?

A. I don't have to guess at it at all. I know the contract I had with these people.

Q. I know, but on this page of the book, there is nothing to indicate what that was, five thousand of, except from the price, is there?

A. To an outsider, no, but to myself, yes. On the extreme right of the page it shows the amount that I owe upon this direct settlement with Ware & Leland, the figures 37.50, which means thirty-seven dollars and fifty cents.

Q. And that is all there is there?

A. That is all that is there.

Q. Was that transaction a purchase by you in the first place?

A. It was a sale by me in the first place.

Q. Is there anything to indicate that on this page?

A. This book is not used for that purpose.

Q. I know, but there isn't anything to indicate that, is there?

A. There is an indication that I must have sold out five thousand of wheat at seventy-six and three quarters, or
1019 I would not have settled it with them at seventy-seven and a half.

Q. And lost money?

A. That is what that would indicate very plainly.

Q. So you would have made money if that had been the other way?

A. I would not have made it, my customer would.

Q. When did you make that sale,—you made it to W. & L., who are they? A. Ware & Leland.

Q. When did you make that sale?

A. I can't give you the date of it without referring to my option book which I have not here.

Q. But that was of May wheat? A. It was of May wheat.

Q. And that transaction from its position here in this book can you tell about when it was that you made the sale you say you remember something about the transaction?

A. Well, I remember it simply from the fact that I know that I had wheat sold to them and I had an order to buy five thousand of wheat and I bought it and that went to make a direct settlement.

Q. When did you buy it?

A. Well, my impression would be without being accurate and looking at my books, that I sold them the wheat on November 30th, and bought it of them on December 2nd that would be my recollection.

Q. So that you sold it on Saturday and bought it on Monday following?

A. That is possible, I don't say that it is correct, but it may have been the day before that.

Q. Now in your business, Mr. McHenry, as a rule and ordinarily, how much time elapses between the purchase or sale

and the subsequent sale or purchase in transactions which form a ring?

A. There is no way to answer that question, Mr. Jenks.

Q. Well, as a rule and ordinarily, are not the trades rung up in a very few days after they are made?

A. Not necessarily. I have had trades say clear to the end of the contract.

Q. Of course, but as a rule, generally, that is what I am after? Generally are not the purchases that you made
1020 sold out and ring up within a very few days from the time that you make the purchase?

A. No sir, I would not say that at all, because I don't know —you can't tell anything about that, it is a matter that nobody on earth can tell anything about or answer intelligently.

Q. From May 31st, 1901, down to the present time, have you dealt in any other option on the Board of Trade than the December option? A. Yes sir.

Q. What option was it?

A. Well, what commodity do you refer to?

Q. Any?

A. I think I have dealt in July wheat, December wheat, May wheat.

Q. That is next May? A. Yes, no sir, May, 1901.

Q. I didn't put my question right. I mean in what option previous to the month of December? You have answered that that you had July wheat? A. Yes sir.

Q. Was any wheat delivered to you in July?

A. I couldn't answer that without reference to my books.

Q. Did you deliver any wheat to anybody else?

A. The same answer will have to go, I would have to look to see.

Q. You have no recollection of doing so?

A. I can't remember now, although my recollection is that there was some July wheat received and delivered, the amount I can't remember.

Q. Do you remember whether you paid for any in July?

A. It was received and delivered by the delivery of notices under the rules of the Board of Trade.

Q. Then you did not pay for any and nobody paid you for any? A. No sir, except in the way that I have mentioned.

Q. Well, that would not be so, they did not give you the cash nor a check?

A. Well I am not going to enter into any argument with you about what constitutes a delivery on the Board of Trade to me.

1021 Q. I am not talking about any delivery, I am talking about whether you paid anybody for wheat, or anybody actually gave you the wheat, take it that way?

A. I have already answered that question, no sir, I did not.

Cross-Examination

By Mr. Robbins:

Q. Mr. McHenry, you spoke of options, you mean by that, do you not, contracts for future delivery wherein the seller has the option of delivering on any day in the particular month to deliver and not in transactions where the seller has the option of delivering or not, as he pleases?

A. The word, "option," Mr. Robbins, in connection with the grain and provision trade is an absolute misnomer and never should be used. The option book should never be used, there is no option whatever upon the part of the seller of property except as to the time during the life of the contract in which he shall deliver the property sold.

Q. And no option whatever so far as the purchase is concerned? A. No sir.

Q. In the course of your experience on the Board of Trade you say you have had a good deal of cash wheat delivered to you? A. An immense quantity of it.

Q. You mean delivered to you upon these future contracts?

A. Yes sir.

Q. That is the largest amount of cash wheat you ever had delivered to you at one time?

A. My recollection is that on the first day of May, 1881, I paid for seven millions and a half of cash wheat.

Q. Receiving the warehouse receipts and the property into your hands? A. Yes sir.

Q. And paying out that amount of money in cash?

A. Yes sir.

Q. And it was on the same class of contracts that are frequently settled by this ringing system and are made in the wheat pit through bids for future delivery? A. Yes sir.

Q. What is the largest amount of corn you have ever
1022 had delivered to you at one time upon these contracts for future delivery made on the Board of Trade?

A. My recollection is without being accurate as to the figures that on the 30th day of September 1884, I paid for nearly four million bushels of corn.

Q. Received the warehouse receipt and paid for that by check? A. Yes sir.

Q. And how much did you receive and deliver for that month? Can you estimate that?

A. It would be impossible, Mr. Robbins, to do that now; there was an immense amount of it.

Q. But a large amount in excess of four million bushels?

A. That was received on the last day of the month. All through the month I was receiving and paying for cash property.

Q. Well about how much during the month?

A. Well, I should think there must have been at least three million bushels more during the month that was delivered aside from that on the last day of the month, September 1884. Of course it is so long back, that it is almost impossible for me to remember all the details of those things. I know it was burdensome enough to have to pay for it.

Q. While it is true that customers are not consulted by the members of the Board of Trade in making their rings it is also true, is it not, that a broker who makes a ring always has open a contract in his office for his customers where the customer has not closed his trade?

A. I can't answer for anybody but myself, I always do.

Q. That was what I was asking about? A. Yes sir.

Q. I believe your testimony is confined to that. Trades that are closed between yourself and your customer remain open frequently as between yourself and the other members of the Board of Trade with whom you have made them?

A. Yes sir.

Q. And remain open until settled by ringing or closed by delivery? A. Yes sir.

Q. If not closed by the ringing system, deliveries
1023 necessarily result in the settlement, do they not?

A. Deliveries or defaults.

Q. Does this hedging you refer to comprise cases of persons who have the grain or property on hand and sell for future delivery, sell it for future delivery to protect themselves, or to assist them in carrying it, or for some such reason?

A. That is done very largely upon the Board of Trade.

Q. By elevator owners who own the grain and by cribbers of corn who have it in the country, and by pork packers who have the product in their warehouses or in process of manufacture? A. Yes sir.

Q. And sometimes by millers? A. Yes sir.

Q. And upon that class of hedging contracts are deliveries frequently made? A. They are frequently made, yes sir.

Q. And these hedging contracts are made in the business in the same way that others are?

A. So far as any that I ever have made, they have been made there.

Q. And there are, are there not, other contracts for future delivery made in the pit wherein the property is delivered?

A. Repeat that question, will you please?

(Question read.) A. Yes sir.

how

Q. Well, now, can anyone standing in the wheat pit or how can any officer of the Board of Trade, wheat or other pit, tell at the time the transactions are made those that will result in deliveries from those that will be settled by ringing?

A. It is an absolute impossibility, for any one to tell.

Q. Or tell between those two classes of contracts, the contracts such as you call scalps?

A. An utter impossibility to tell in either case.

Q. Is there any way of telling the quotations that are—the results—the record of prices in one class of transactions from the quotations with regard to prices in the other class?

A. No sir, none that I ever discovered.

Q. The trade name for options is puts and calls is it not?

A. I never heard puts and calls called anything but
1024 but a put and call or a privilege.

Q. Well, it is a privilege given by one person to another for a consideration, either to receive or to deliver the property, is it not?

A. You are talking now about puts and calls?

Q. Yes? A. Yes sir.

Q. Is that class of contracts used on the Board of Trade?

A. No sir, not at present.

Q. Has it ever been on the floor of the exchange?

A. Well it is so long ago that the memory of man runneth not back?

for

Q. Is it not true that puts and calls are and have some time been prohibited when made by members of the Board of Trade anywhere within the state of Illinois?

A. There is a statute prohibiting that class of trading.

Q. Isn't there a rule?

A. There may possibly be a rule, Mr. Robbins; I confess that the other day when this question was asked me, that I had not read up the rules; there have been a good many passed since—at the time that I was in the Government service I was not posted on them.

Q. See if that refreshes your recollection? (Handing a copy of said rules to the witness.)

A. It is section nine of rule four.

Q. Just at the end of it there? A. Yes sir.

Q. Well, now, is it not a fact that the action of the Board of Trade in that rule has driven trading in puts and calls by members of the Board of Trade out of the State of Illinois?

A. I am not prepared to say that it has, Mr. Robbins.

Q. Well, has it closed up that room that you spoke of across the street from the Board of Trade? A. Yes sir, completely.

Q. There is no place that you know of where members of the Board of Trade or others assemble in the city of Chicago
1025 now to trade in puts and calls, is there?

Mr. Jenks: You had better withdraw that question I guess, Mr. Robbins.

Mr. Robbins: No, I would like to find out if there is.

Mr. Jenks: I guess you had better withdraw the question.

A. So far as members of the Board of Trade are concerned, I know of no such place.

Redirect Examination

By Mr. Jenks:

Q. Mr. McHenry, how long since you have known members of the Board of Trade as individuals to deal in puts and calls?

A. In Chicago?

Q. Yes?

A. I can only answer that question as to myself.

Q. Well, lets take yourself first, did you ever deal in puts and calls? A. Yes sir.

Q. When?

A. At the time that the room I spoke of was running.

Q. And that existed down to what time?

A. I could not answer that question, I don't recollect when it opened and when it closed.

Q. You can come pretty near, it, can't you?

A. No, I can't, my memory is very vague on that subject.

Q. For how many years did you while you were a member of the Board of Trade deal in puts and calls?

A. I [delat] in them up to the time that I found that if I made a trade in a put or call, or a privilege for a customer, and it resulted in a loss he could plead the statutes of the state of Illinois on that subject, and I stopped.

Q. Now, about when was that.

A. I think it was in 1893, or '4 or '5, along in there.

Q. And how long had it continued with you?

A. Well, sir, I could not answer that question, it is a long time.

Q. A great many years? A. A great many years.

Q. Wasn't it all the time that you were in the grain business?

1026 A. You might say practically up to the time I went back into it, at this time in June or the 31st of May, 1901, but previous,—at whatever time that this regulation of the Board of Trade, this rule, rather, was adopted by the Board, that time, so far as I was concerned, all trading in puts and calls and privileges was stopped.

Q. My question was, how long you traded in puts and calls, covering a period of how many years?

A. Oh, I should say twenty years.

Q. And the statute of the state that you have referred to existed during all of that time, didn't it?

A. No sir, it did not.

Q. It did not? A. No sir.

Q. Well, it did for the most of that time, didn't it?
A. No sir.
Q. Now while you were dealing in puts and calls, were other members of the Board of Trade doing the same thing?
A. Yes sir.
Q. And the most of the members who were doing a commission business were obliged to deal in puts and calls in order to keep their customers, were they not?
A. Not the most of them, a great many of them were.
Q. Now, whenever they bought a put or a call, that was done after the trading hours on the floor wasn't it?
A. Yes sir.
Q. Whenever they did that, and the next morning they wanted to make the call, was that entered on their trading card on the floor of the Exchange room of the Board of Trade?
A. It could not be the next morning, Mr. Jenks, because it would—
Q. Well, but the second morning?
A. In a great many instances yes sir.
Q. And from that time it went right along as an actual trade made on the floor as between the members of the Board who entered into the transaction? A. Yes sir.
Q. Did you know a time that a gentleman named John Hill threatened to have the members of the Board of Trade
1027 indicted if they did not stop dealing in puts and calls?

Mr. Robbins: Wait a minute, I guess I will object to that.

Mr. Jenks: It is only preliminary, just whether he remembers it or not, that is all I want to know, just yes or no.

(Question read.)

A. I do not.

Mr. Mr. Robbins: I want a ruling of the Master.

Mr. Jenks: I have put that question as fixing the time when he quit dealing in puts and calls, but as he don't know that don't do any good.

The Witness: Well, I don't know, Mr. Jenks, I could not tell you really when that was. All I ever knew about it was simply rumor anyway.

Mr. McHenry, what was the matter in May, 1881, that seven million five hundred thousand bushels of wheat got stuck onto you? A. I had it bought for customers and not sold.
Q. Were you running a corner? A. No sir.
Q. Were you trying to? A. No sir.
Q. What was the matter, what broke there?
A. What is that?
Q. What was it that broke?

A. My customers had bought a large line of wheat which they were willing to take and pay for, the actual property.

Q. How much wheat had you bought at that time?

A. I could not tell you without reference to my book.

Q. How much more than seven million five hundred thousand?

A. I could not answer that question without reference to my books, Mr. Jenks, it is a long while ago, you must remember.

Q. Well, I should think so.

A. 1881 is twenty years ago.

Q. Yes, 1881? Now, you say there was no corner?

A. No sir.

Q. Was that wheat in Chicago at the time?

A. I had the warehouse receipts for it, I shipped a good part of it, and I presume it was here or I could not have got the actual wheat to ship.

1028 Q. Well, that was the only time within the limit of the memory of man that you ever got that amount of wheat, wasn't it?

A. That is the largest amount that I ever got, although I have paid for a great deal of cash property since I have been upon the Board of Trade.

Q. Now what was the matter with corn in 1884?

A. I had a large line of corn bought for September delivery during the month of September it was delivered along from time to time and on the last day of the month the receipts were very large here and those contracts that I had gotten with members, they filled by actual delivery of the property. I bought a large amount of property on the last day of the month also.

Q. Now you say that during that month there was delivered to you seven million bushels which you paid for?

A. That is simply an estimate, I could not give it accurately. That is as near as I can recollect, that is seventeen years ago.

Q. Well how much did you trade in for that delivery of September corn?

A. I could not tell you without reference to my books; a very large amount of property.

Q. What do you mean by a very large amount?

A. People's ideas on that point differ so much that it would be a hard question to answer, Mr. Jenks.

Q. I know, but about?

A. Oh, I should call probably 30 or 40 million bushels a large amount of property.

Q. Well, when you received seven million bushels, that was delivered, how much do you think you traded in that was same not delivered, for that option? A. You mean corn?

[A.] Yes.

[Q.] I could not answer that question intelligently, at all, much as I would like to.

Q. Well, you did have a great many times more than the seven millions traded in for that option, didn't you?

A. Yes sir.

Q. And the same way with the wheat?

A. The amount of wheat that I had bought for May 1029 much delivery of that year was not very larger than the actual amount of property delivered to me, purchased sometime around from that and during the month of May, 1881, my recollection is that I had delivered to me of the property that I had bought, that the actual delivery in cash—

Q. Who had bought that wheat?

A. I decline to answer that question.

Q. How many different people?

A. I decline to answer that question. My relations to my customers are the same as a lawyer to his clients.

Q. When was the Harper deal?

A. Well, there were two, what are known as Harper deals.

Q. When were they?

A. One was in 1881 and one in 1887.

Q. Was the Harper deal in May wheat, 1881?

A. Not what was known as the Harper deal, no sir.

Q. In what option was that?

A. There was really no deal during 1881, that ever should have been designated as the Harper deal. Mr. Harper was the smallest toad in the puddle in connection with that whole matter, although his name was given to it.

Q. Well, I know that, so does everybody, I guess, but that deal was known as the Harper deal, was that in the May option? A. No sir.

Q. What option was it?

A. That deal on the buying side culminated in August, 1881.

Q. That was commenced before May, wasn't it?

A. Commenced in December, 1880.

Q. And this receipt of seven million bushels of wheat by you during May was connected with what was called the Harper deal, wasn't it?

A. Yes sir, with what was called the Harper deal.

Q. And it was connected with the parties who were interested in the deal which was called the Harper deal?

A. I decline to answer that question. That is going into my private business, Mr. Jenks.

Q. Oh, no, not at all; that is not what I want; I don't intend to have that. What I do mean to get at is whether this deal was connected with what was called the Harper
1030 deal, that you have answered, that is all.

Mr. Robbins: That is all.

The Witness: Are you all through?
Mr. Jenks: Yes, I think so.
The Witness: All through with me, are you gentlemen?
Mr. Robbins: Wait a minute. I want to ask you a question.

Recross-Examination

By Mr. Robbins:

Q. Mr. McHenry, have so-called puts and calls ever been recognized by the rules of the Board of Trade? A. No sir.

Q. In trading? A. No sir.

Q. Has the Board of Trade ever recognized or permitted, so far as it knew of it, the putting of puts and calls into contracts that were to be cleared under the Board of Trade rules?

A. No sir, I don't know that they have.

Redirect Examination

By Mr. Jenks:

Q. As a matter of fact they were put into trades and cleared just the same as any other contracts, weren't they?

A. Yes sir, they was.

Q. And as a matter of fact, the officers of the Board of Trade knew that that was being done?

A. I don't know anything about what the officers knew, Mr. Jenks.

Q. Were you one of them?

A. I have been a director of the Board of Trade.

Q. Weren't you one of them at the time?

A. Well, I would have to go back and see when I was an officer there.

Q. Well, if you were an officer of the Board of Trade at the time and you conducted the put and call business yourself, did you as an officer know what you did as a man?

Mr. Robbins: Wait a minute. I object to that.

Re-recross-Examination

By Mr. Robbins:

Q. Did I ask you wherein the system of closing trades by off set or rings that you have described in your evidence, differs from the system provided for in the rules of the Board of Trade? A. I don't recollect it?

1031 Mr. Jenks: You did ask him that.

Mr. Robbins: I think I asked this witness—

Mr. Jenks: You asked that.

Mr. Robbins: Wherein does the system of rings that you have described in your evidence differ from the system that is prescribed by the rules?

A. It does not differ at all, and is in accordance with the rules of the Board of Trade.

Q. And how is it as to this delivery by notice; wherein does that system as you have described differ from the one prescribed by the rules?

A. It does not differ at all; it is in exact compliance with the rules of the Board of Trade.

Q. That is all.

Samuel Powell, produced as a witness on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

[A.] State your full name? A. Samuel Powell.

Q. Where do you live, Mr. Powell? A. Ravenswood.

Q. In Cook County? A. Yes sir.

Q. How long have you lived in this county?

A. About 34 years.

Q. Were you ever a member of the Board of Trade of the City of Chicago? A. No sir.

Q. Did you ever do business with any firm connected with the Board of Trade?

A. I was in the employ of a Board of Trade firm, yes sir.

Q. In the employ of what firm?

A. The first firm was Munn, Morton & Scott.

Q. They were elevator men?

A. Yes sir, Munn and Scott were.

Q. The firm of Munn, Morton & Scott were engaged in what sort of business?

A. Commission business, grain and commission.

Q. Was their business purely a commission business?

A. No, they had some speculative accounts.

Q. What distinction do you make between specula-
1032 tive accounts and commission business?

A. Well, there is quite a little difference in that; sometimes a man buys in the hopes that the property will go up, if it does, he sells it out.

was

Q. Well, you mean that that firm dealing on their own account as well as doing a commission business, then?

A. No sir.

Q. They were doing a speculative business for customers?

A. Yes sir.

Q. Did they do that on commission? A. Yes sir.
Q. Well, then, their whole business was a commission business? A. They charged commission on both, yes sir.
Q. When was that that you were in the employ of that firm? A. It must be about 34 or five years ago.
Q. What is your business now?
A. I am manager of the clearing house of the Board of Trade.
Q. How long have you been such manager? A. 18 years.
Q. When was the clearing house formed?
A. September 23rd, 1883.
Q. By what operation was the clearing house formed?
A. By an order from the Board of Directors.
Q. Of the Board of Trade? A. Yes sir.
Q. The clearing house then is a part of the Board of Trade of the City of Chicago? A. I should say so, yes sir.
Q. Is the clearing house absolutely under your management? A. No sir.
Q. You are called manager of the clearing house?
A. Yes sir.
Q. Under whom do you manage it?
A. We have the clearing house committee, appointed by the directors—by the president, I guess.
Q. Can you say positively where that committee comes from and how it exists? A. Yes sir.
Q. How is it? A. The president—

Mr. Robbins: Wait a minute. That is provided by the rules which you have brought in.
Mr. Jenks: That don't make any difference.
The Master: Mr. Jenks' idea is to show things that
1033 the rules do not provide for. He asks as to how it is actually done as I understand it.

(Question read.)

A. I think the president appoints the, the president of the Board.

Mr. Jenks: Is the committee composed of directors of the Board of Trade?
A. Yes sir.
Q. Then you are superintendent there under that committee? A. Yes sir.
Q. Who pays you for your services? A. I pay myself.
Q. Out of what?
A. The receipts of the clearing house.
Q. How does the clearing house manage to have any receipts?

A. We charge a certain commission for clearing these trades.

Q. Who do you charge that commission to?

A. Members of the clearing house.

Q. How much commission do you charge?

A. We charge a cent an item.

Q. Who are the members of the clearing house?

A. You have them on that sheet, (Indicating).

Q. Are the members of the clearing house only the persons who are named on Defendant's Exhibit 1, which is a clearing house sheet? A. Is that the sheet, (Indicating)?

Q. Yes?

A. Let me see it. There are others now. Some of these may be off, they change from day to day or week to week; we get out a new edition about every three weeks.

Q. Can you tell by looking at Exhibit 1, how long since that sheet was in use? A. Yes sir.

Q. That form? A. Yes sir.

Q. How long since that was in use? A. November 2nd.

Q. 1901?

A. Let me look at that. Yes, November 2nd, 1901.

Mr. Jenks: I will ask you, Mr. Robbins, if you have one of those sheets that are in use now?

Mr. Robbins: Why, won't that answer your purpose? He will tell you that those are the members of the clearing house at the date of that sheet.

1034 The Witness: Yes sir.

Mr. Jenks: But since then are there more or less members of the clearing house?

A. I could not tell you that.

Q. How are the members of the clearing house distinguished from the members of the Board of Trade?

A. There is no way to distinguish them.

Q. Well, how does a member of the Board of Trade know when he is a member of the clearing house?

A. He has to make application there for membership.

Q. He brings that application to whom? A. Me.

Q. And do you ever refuse to permit him to be a member of the clearing house if he is doing business on the Board of Trade as a member of the Board?

A. His application is submitted to the Committee.

Q. And then what?

A. If they report favorably, his name goes on the sheet.

Q. But what does it require of him to become a member of the clearing house if he is a member of the Board of Trade and doing business on the floor?

A. That is a matter for the committee to settle.
Q. You don't know? A. No sir.
Q. You never found out? A. No sir.
Q. In the past sixteen years? A. No, sir.
Q. Do you know of any reason why all members of the Board of Trade are not members of the clearing house?
A. I could not answer that.
Q. I think you can if you try hard. Read the question.

(Question read.)

A. I could not answer that. There are a good many reasons why.
Q. The question is, whether you know of any reason?
A. I don't know of any reason, no.
Q. Well, now, you could answer it easily?
1035 A. Well, I did not know exactly what you meant.
Q. What record is kept in the Board of Trade clearing house? A. No record.
Q. No record?
A. Well, we keep these reports that are handed in to us every day, we keep them for a year.
Q. What else is kept by the Board of Trade clearing house?
A. We keep an account there with each individual clearing to show the number of items he clears.
Q. Do the number of items cleared through the clearing house show the number of transactions that the member of the clearing house has on the floor of the exchange room of the Board of Trade? A. No sir.
Q. Is there anything shown on what is called the clearing house sheet about items, except the total amount in dollars and cents that each member at the time owes to the other members, or that the other members owe him?
A. That is rather a long question, Mr. Jenks.
Q. It ain't very long if you will pay attention to it.
A. I did pay strict attention.

Mr. Jenks: Read it to him again. (Question read.)

A. That clearing house sheet contains just the net result of all settlements made by offsets on contracts made for future delivery.
Q. And are those the only things that are settled through the Board of Trade clearing house?
A. I think so, as far as I know.
Q. Is there any record kept in your office or anywhere else on the Board of Trade, to your knowledge, showing the quantity of wheat, corn, oats, barley or provisions of any kind, dealt in for any particular month's delivery on the floor of the exchange room of the Board?

A. I don't understand that question.

(Question read.)

A. Yes sir, every commission house there keeps a record of the purchase and sales and under the rules they must keep a settlement book, too, to show how it was settled.

Mr. Jenks: I ask that the question be read to the
1036 witness again. Now if you will pay attention to it—

A. I tried to.

Q. Yes or no, is there any record kept in your office or anywhere else on the Board of Trade? (Question read.)

A. Do you mean by that, Mr. Jenks does the clearing house or Board of Trade keep a record of the transaction?

Q. Yes sir. A. No sir.

Q. Is there any way that you as manager of the clearing house can ascertain the quantities of commodities dealt in on the floor of the exchange room of the Board of Trade?

A. No sir.

Q. To your knowledge, is there any way in which the Board of Trade can ascertain that?

A. Find out if they wanted it.

Q. But if they wanted to find out they would have to go to every member and ask him to report about his own books, is that it? A. Yes sir.

Q. And that is the only way they could find out?

A. Yes sir.

Q. Mr. Powell, in 1890, the largest business of any year was done in the clearing house, was it not?

A. I could not tell without looking that up.

Q. In 1890, we will suppose that the clearings amounted to $62,227,165.25? A. Yes sir.

Q. And that the balance for the same time amounted to $22,821,284.05. Are you able to tell us as manager of the clearing house, how that difference comes? I want to know what the difference is between the totals of the clearings and the amounts that are set down under the head of balances?

A. They have no relation to each other whatever.

Q. Well, what do they mean?

A. You can't judge by either one of them as to the amount of business transacted there.

Q. That is what I have asked you? A. Sir?

Q. I asked what those things mean?

A. Well, now, the clearings, take the clearings for instance.

1037 Q. Yes?

A. The sheet that represents the total number—the total amount of off-sets one way and the other. The clearings

represent the net balances in cash. For instance you might owe $2,000 on one side of your sheet and claim $1,000 on your other, the net result would be $1,000, that would be the balance, while you would have $3000 clearing.

Mr. Jenks: Now read that answer. (Answer read.)

A. You have got that wrong. I said the clearings represented the total number of off-sets, pro and con. Now the balances represent the net differences between them.

Q. Now let me see if we can get that down so that we will be posted and you and I can understand it?

A. All right, Mr. Jenks, I can explain it here, right on that sheet so you will see it.

Q. Now wait a minute because we have got to have it written down here so that anybody else can understand it. The clearings for 1900 amounted to sixty-two million and odd dollars that I have named? A. Yes.

Q. Now what do the clearings mean?

A. They represent the total amount of the offsets pro and con, one way and the other.

Q. Money of all the members of the clearing house?

A. Yes sir, and the total.

Q. That does not represent the cash that was paid into the clearing house? A. No sir.

Q. What does represent the cash that was paid into the clearing house? Is it this other item under the head of balances? A. Yes sir.

Q. $22,821,284.05?

A. That represents the cash, yes sir.

Q. Now that represents the cash, not only that was paid into the clearing house, but it represents the cash that is due from some of the members of the clearing house to other members of the clearing house? A. Yes sir.

Q. Then is the charge that the clearing house makes of one cent, the charge that is received by the clearing house
1038 in addition to this last item read? A. Yes sir.

Q. Now let us go back to this item called clearings?

A. Yes sir.

million

Q. The large sixty-two dollar item? A. Yes sir.

Q. Does that represent the differences in market prices in all the deals of the members of the Board of Trade in transactions which are rung up and closed through the clearing house? A. No sir.

Mr. Robbins: Wait a minute. I object to that. I object to that.

Mr. Jenks: Now, let's see, now. This is made up from the total of all of the clearing house sheets, is it not?

A. The balances are, yes sir.

Q. What? A. The balances are, not the clearings.

Q. What did you say?

A. The balances are, not the clearings. You asked about the balances; that is the total amount of money paid in. I take it in for one member and I pay it to another. We use our clearings to show that that balance is correct.

Q. In taking all of the clearing house sheets that were sent in there in the year 1900, and [putting] them up, you would arrive at this sixty-two million dollar item?

A. Yes sir, the total claims and the total owes amount to just that, if that is the figures there.

Q. Now I will repeat the question as I think I was right before, according to your answer just made. The clearing house sheets are handed in by the different members of the clearing house, and each sheet is footed up in one column, "I claim from" and in another column "I owe to," and all the members of the clearing house hand in the same kind of sheets with those same things on it, that is true, isn't it?

A. Yes, and then he carries it to the end, the fifth column, the recapitulation, takes them all in.

Q. That is the balance, isn't it?

A. No, I will show you that. The difference between those —that has nothing on it. (Indicating Defendant's Exhibit 1.)

Q. It isn't there, is it?

1039 A. If I had a sheet there with something on it, I could tell.

Q. How?

A. If you had a sheet there with something on it, I could tell you.

Q. But this a blank? A. Yes.

Q. To be filled out?

A. I am telling you now the difference between the clearings and balances, so as you will know. Suppose you claim on that sheet the total claim $3,000 from different members of the clearing house?

Q. Yes?

A. And you owe $2,000. Then you would get a check made for $1,000. Now your clearings that day—

Q. That would be a credit balance?

A. Then your clearings would be $3,000, you see. You see I would make a check out for $1,000 and your $2,000 makes three.

Q. Now it would be the same with every other member of the clearing house? A. Yes sir.

Q. Now that would represent $3,000 cleared?

A. No, I should say not.

Q. What would it represent as cleared in the case you put?

A. Well, it is like this, you see. They have a settling price. The secretary posts a settling price every day at noon, you see. Now that settling price is used as a basis to adjust all contracts that are settled by means of an offset. [Not] it may not represent a difference in the price at all. You see the settlement price to-day may be way off from the trades to-morrow. It may be right close to it; you can't tell nothing about it. If your trade is an old one it is a long way from the settling price don't you see it is, and your clearings would be large, and if it is a recent trade it would be right close to the settling price your clearings would be small and your balances would be small.

Q. What is the settling price that you speak about?

A. That is the price that is fixed every noon time.

Q. Who makes it?

A. The secretary posts it from his office.

1040 Q. The secretary of the Board? A. Yes sir.

Q. Who makes it? A. Well, I suppose he does.

Q. What is it made for? A. Two purposes.

Q. What is one?

A. One purpose is to facilitate the transaction of this business through the clearing house; it gives everybody a certain price to work on; I don't have to go to you to find out or to anybody else, I know what it is. You see that is a basis we all use, and the other reason is that it enables me to pay and collect of the parties to the contract. I don't have any business with anybody else in the ring.

Q. What ring? A. Any settlement that is made up.

Q. These trades that are rung up, is that what you mean?

A. No sir, that is a trade that is settled by an offset.

Q. By an offset or a ring?

A. I don't know anything about the rings, they are not on the sheets.

Q. You don't know anything about rings on the Board of Trade?

A. I do know something about rings, that is what they call rings.

Q. What?

A. What they call rings; we don't name them so.

Q. What do you call them?

A. I call them offsets, the same as it is printed there.

Q. Very well now. It is an offset of each and of the ring, that is what goes through the clearing house? A. Yes sir.

Q. Now, I will start again with this sixty-two million dollars. How can you arrive at that amount of money from taking all the clearing house sheets and the contents of them for the year 1900?

A. I simply add the total number of clearings on each sheet together, see?

Q. Yes?

A. That must equal the amount of owes, there can't be any other way.

Q. Well, the amount that the whole members of the clearing house owe, is exactly equal to what is due to all the members of the clearing house in other words, both sides balance?

A. Whatever is claimed, somebody must owe.

1041 Q. And what the whole lot of them claim is owed by the whole lot of them?

A. No sir, not at all, just as you might claim as I told you, $3,000. You would not get it, you might owe [too]; you get the net result.

Q. Well, I claim so much?

A. Yes, but you won't get it if your net—

Q. That don't make any difference, I owe so much too?

[Q.] Yes, but now you take your owes from your claims; if you claim more than you owe, you get the balance.

Q. Well, which is down there in this sixty-two million dollar item? A. It is the total amount of claims.

Q. What I claim? A. Yes sir.

Q. Or is it the difference between what I claim and what I owe? A. It is what you claim.

Q. Is what I claim? A. The total amount, yes sir.

Q. Well, now, you take all of the members of the clearing house— A. And it also represents what you owe.

Q. Because both things are exactly alike? A. Yes sir.

Q. Taking them together? A. Yes sir.

Q. Well, now, I will ask you the same question again. This the sixty-two million dollars represents what all of members of the clearing house, by their clearing house sheets for the year 1900 claimed? A. Yes sir.

Q. And it also represents what all of the members by their clearing house sheets, owe? A. Yes sir.

Q. And the amount that they claim and the amount that they owed, were exactly alike? A. That would not be at all.

Q. Why not?

A. Because you may claim more than you owe; but it is the net result of all these claims you know.

Q. Well, that is my question.

A. Well, I didn't get it then, I didn't get what you meant, Mr. Jenks. I didn't understand what you meant.

1042 Q. The amount that all of the members of the clearing house claimed— A. Yes sir.

Q. Was exactly equal to what all of the members of the clearing house owed?

A. The net, yes. That would be true of the balances but not of the clearings. You haven't got what you want, Mr. Jenks.

Q. Well, give it to me, then?

A. Well, I am not giving it to you; I don't understand your question unless you don't put it right. I am telling you now on that sheet—we will say it claims $3000.

Q. Yes? A. And it owed two.

Q. Yes?

A. Now $2000 from the $2000 on that sheet is $1000 now the the $3,000 would represent the clearings, because $1,000 that you got added to the $2000 you owe, makes the $3000 you claim. Now do you understand?

Q. Well, I understand what you say, but this is what I am getting at—

A. Now it is hard to get at what you want, Mr. Jenks because you can't—we use these clearings simply to prove our balances, that is all, you see.

Q. Well, the amount of money that you got in in the year 1900, was $22,821,284.05?

A. Yes, it runs about that; it runs about twenty-five millions a year.

Q. And that is what you do on the balances?

in

A. Yes sir, that is the amount of money I took from one and paid to another.

Q. Now you have got here an item which is called clearings?

A. Yes sir.

Q. And it amounts to sixty-two million dollars?

A. Yes sir.

Q. I want to know how you get that item of sixty-two million dollars, out of all of the clearing house sheets that all of the clearing house members handed in to you during the year 1900?

A. Well, sir, I simply take the total claims on each sheet, put them down, foot them up, set them out, so much. Now somebody has got to owe that. If you claim $3000 on the sheet, somebody has got to owe it.

1043 Q. Yes?

A. It may be Tom, Dick or Harry, you can't tell, but it is somebody has got to owe it. Now, in dove-tailing one through the other, the deals are as you see there about twenty-five million dollars.

Q. Yes, twenty-two million.

A. Yes, now we use those clearings to show that those balances are right, that is all.

Q. Well,—

A. And they represent—these clearings represent—

Q. On the sheets—That is what I wanted to come to.

A. They represent the total claims—I should say the total owes as near as I can get at it.

Q. Now, I see, that is right. A. Yes.

Q. Now I have asked you if the total amount claimed and the total amount owed on the clearing house sheets are not identically the same so that they balance one against the other?

A. Yes sir.

Q. What? A. Yes sir.

Q. Well, now, that is right. We have come to that after all.

A. I don't think you understand it.

Q. Well, maybe I don't, but that is what I have been trying to get you to say.

A. Well, it is a hard thing to tell you just exactly how it is.

Q. Now, Mr. Powell, is it true that the total of what one member claims as the amount coming to him is the difference in purchase and sale prices of his commodity? A. No sir.

Q. On the clearing house sheet what is the item of claims made up of?

A. That is the balance of offsets between the price he has got it bought or sold at and the settlement price. It has no reference to what he has got it bought or sold at.

Q. Now, lets see whether you are right or whether I am. Has the settlement price anything to do with the amount that is coming to me if I make a clearing house sheet and claim so much?

A. Yes sir, that is the basis on which you all work.

1044 Q. And if I have half a dozen transactions that are rung up or settled and those half dozen transactions all one result in a profit to me, something is coming to me on each of them, I have put in there a claim coming to me of so much money from half a dozen different parties? A. Yes sir.

Q. Now isn't that claim that I make the total amount that is coming to me from all those parties at the footing of my clearing house sheet?

A. Certainly sir, but a sheet hardly ever comes in that way, not once in a million times.

Q. Well suppose it don't.

A. Well, it makes a good deal of difference whether it is all on one side of the sheet or on two sides?

Q. Not at all. A. Sure it does.

Q. No.

A. You may claim say $100 and $100 only which would [would] be the balance on your sheet and it would be the clearings on your sheet both, don't you see it would? You would get your $100 one hundred but if you claimed and owed fifty, then you would only get fifty.

Q. Well, that would be the balance?
A. Well, that is what I have got there.
Q. Now, I claim a hundred.
A. Well, you would not get it.
Q. Why I would get it if it was owing to me, wouldn't I?
A. Certainly you would. If you were owing something on the other side of the sheet I would take it out.
Q. Why I put in the sheet.
A. You said if you had four or five or six different amounts that you claimed?
Q. Yes? A. That amounted, we will say to $600—
Q. Hold on here. Now, I am right, Mr. Witness, I think?
A. All right.
Q. If we can understand each other. I have got a trade with Samuel O. Adams? A. Not a trade, an item, we will say.
Q. What?
A. An item with them, it can't be a trade, because I don't have any trades.
Q. You don't have any trades? Well, a man has a
1045 trade with Samuel O. Adams.
A. I have nothing to do with that, it is between you and Adams.
Q. But I have got a trade with Adams there. Now I fill out my clearing house sheet, and I put down here that I claim from Adams so much. A. All right.
Q. Now you don't know what I have got with Adams and you don't care? A. No.
Q. But I will claim from him so much. Then I have got another trade with Bailey. I put that down here; I claim from Bailey so much.
A. If you want the record there, you don't want to call them trades because they don't come into the settlements we have.
Q. I don't care what you want, but they are not called anything here. I put down the amount.
A. You must have a settlement in order to get that on the clearing house sheet.
Q. Mr. Witness, have you any objection to looking at this sheet? A. No sir.
Q. Look on here; we will have this trade or I will have this trade—I have a trade with Adams.
A. That don't go on that sheet at all.
Q. Yes, it will go on that sheet because I make out this sheet? A. What?
Q. I make out this sheet.
A. Well, I don't recognize them as trades.
Q. Yes you will. A. How can I?

Q. Well, you wait a minute now, and I will show you how on you will have to. And I put down this sheet right opposite the name of Adams, I claim from him so much money.

A. Yes sir.

Q. I go down to Bailey, I have a trade with him.

A. Yes sir.

Q. And I put down opposite his name, I claim from him so much money. A. Yes.

Q. And I go through this list and take different ones and put down what is coming to me from them? A. Yes sir.

1046 Q. Now on the same sheet I have trades with other people and I put down here "I owe to". A. Yes.

Q. A certain amount of money. Now I add up in one total what I claim from all of them. A. That is right.

Q. And I add up what I owe to all of them? A. Yes.

Q. And make one sum total? A. That is right.

Q. Now everybody else, a member of the clearing house, does the same thing on these sheets? A. That is right.

Q. Now the sum total of what they all claim from, goes in there to make up that sixty-two million dollars, don't it?

A. I think not. I think not. Give me a piece of paper there.

Q. Well, taking the sum total of what all of them claims, must equal the sum total of what all of them owes, isn't that right? A. Not necessarily, no sir.

Q. Well, you figure it out how it ain't so. Your books don't balance then.

A. But you get your clearings mixed with your balances. Now here—

Q. No, I don't, either.

A. Let me show you now. You put in the sheet, you take one man, you put in a sheet, you claim $3000.

Q. Yes. A. Now you owe two.

Q. Yes?

A. See? Now you would get my check for $1,000.

Q. That is all. A. That is what was—

Q. That is the balance?

A. Now your clearings then is only $3,000, you see?

Q. Well, but this is what I claimed. A. What?

Q. This is what I claimed from.

A. Yes sir, but the clearings is the owes, added to your check.

Q. It is what?

A. It is the owes added to your $3000 check and I must foot [9t] that way in order to know how I will balance—how I will know. You can see that readily, can't you? If somebody owed you—

Q. I see it readily and I see it just as readily that you are wrong.

A. Supposing you put in a sheet and claim $3000; he puts in one, you owe $3,000; see? Now you would have it
1047 $3000 clearings, and you would not get a check, and he would not pay any. Do you get that clear?

Q. Certainly.

A. The $3000 is the clearings in that case.

Q. But the amount claimed and the amount owed in all sheets is just the same, isn't it?

A. We will take the total amounts owed and we add to that the balance they pay. You see that ought to equal the amount claimed as the amount we pay them. Now, that is it, and that makes the clearing. Now I could not say as to the total amount claimed and total amount owed, but I think as I say here, they ought to come together, I think that is what it does.

Mr. Jenks: Read that answer. (Answer read.)

The Witness: You haven't got that answer right there.

Mr. Jenks: He has got it just about as you said it.

A. I think not.

Q. I think you didn't state it as you intended to. Now start again and state that over again.

A. If we take the total amount owed, and we add to that the balance that the trades paid us, that ought to equal the total amount of claims and the amount we paid them.

Q. Why of course it would.

A. Now, I am just telling you.

Q. Of course it would, but that is just exactly the same thing as making the amount claimed and amount owed identical.

A. Well, if that is the way it strikes your mind, that is it. I have stated I thought that would be right but we have to take both ways.

Q. Well, now, we will take my way; both ways or only one way. What goes to make up the item of sixty two million dollars?

A. Well, I would call that the total amount of the balances of offsets on trades that were settled.

Q. Why but the balances are only twenty-two millions?

A. How is that?

Q. The balances are only twenty-two million?

A. The balances or offsets—for instance each firm
1048 keeps a settling book you see, and in that they enter all their settlements. Now the net result of all those settlements goes on the clearing house sheet you see. There may be a few settlements for all I know—but the result goes on the clearing house sheet and that is the net result of all

the settlements, and I don't know how it is made, each firm can tell you that.

Q. I want to know what the settling price has to do with these sheets?

A. Well, as I told you in the first place it is used as a basis in the adjustment of trades that have been settled by offsets.

Q. What is it for?

A. It is to facilitate the transaction of business and as I understand it it compels the members to pay and collect for their business in settlement.

Q. I thought they paid and collected through the clearing house? A. No sir.

Q. Then what is the clearing house for?

A. What is that?

Q. What is the clearing house for, if they don't pay and collect through the clearing house?

A. It is for the convenience of the members, that is all.

Q. How is it a convenience to the members if they don't pay and collect through the clearing house?

A. I will tell you that. Supposing you had forty items on there and you had to go around to forty different offices to collect that money and pay it. You see what injustice it would work on you. They used to do it that way, it is simply a convenience to the members in order for them to get their money on those settled contracts.

Q. Well the members don't pay and collect through the clearing house? A. What is that?

Q. Do the members pay and collect through the clearing house? A. Yes sir.

Cross Examination

By Mr. Robbins:

Q. Mr. Powell this item of sixty-six million that Mr. Jenks has referred to, covering one year, is this the total of all
1049 items sent in on these sheets to you?

A. Not the total of all items.

Q. A total of the amount of all items? A. Yes sir.

Q. So that if I were to claim from Mr. Hill on my sheet $50 and send it in, that would go into that total, and if I owed Mr. Hill $50 that would go in and if he sent in a sheet claim $50 from me, that would go in too, wouldn't it?

A. Yes sir.

Q. So that the items from both standpoints of the one who claims it and the one who owes it would be totalled to make this sum?

A. Yes, $50 claimed; the offset against it is $50 owed.

Q. So that in that case that would make a hundred dollars of this aggregate? A. Yes sir.

Q. You know about the fixing of a delivery price every day on the Board of Trade? A. Yes sir.

Q. Now that is under the rules of the Board, is it not?

A. Yes sir, it is a result of the rules.

Q. The amounts due either way from that delivery price among members of the Board are not those cleared through the clearing house? A. I don't think that is clearly put.

Q. What?

A. I don't think that is clearly put. Do you mean cash with grain, delivered, the difference?

Q. I mean the difference between the delivery price of a day and the amount at which the member would buy or sell who is participating in the delivery, is collected through the clearing house, is it not? In other words, are not deliveries made on the basis of the delivery price? A. Yes sir.

Q. And are not the deliveries paid for by check, with a notice on the basis of the fixed delivery price of the day?

A. I don't know as I get your meaning. If I have 5000 wheat to deliver to you I make out a delivery notice.

Q. Supposing the delivery price today was 71c.

A. I make it up at 71 to you regardless of my price.

Q. And the check that would go with the warehouse receipt or that would be delivered in exchange for the warehouse receipt would be on the price fixed at 71?

A. Yes sir.

1050 Q. Regardless of the price at which the man really had the trade made? A. That is right.

Q. Now the difference between the 71 and the price at which the man really had the trade made would be collected through the clearing house?

A. I don't think that the rules provide it.

Q. What?

A. I don't think that the rules provide for that.

Mr. Jenks: We will have to come back here with this witness because we have got this all muddled up, you and I together, and I am going to understand it; in other words, I am going to see if I can't make the witness understand it.

And thereupon, at 5:00 o'clock P. M., on said day, December 4, 1901, an adjournment was taken to ten o'clock A. M. December 5, 1901.

1051 December 5th, 1901, 10:00 A. M.

Parties met pursuant to adjournment.

Austin W. Wright, a witness produced on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

Q. Mr. Wright will you state your full name?
A. Austin W. Wright.
Q. Where do you live? A. 3637 Prairie Avenue.
Q. In Chicago? A. Yes sir.
Q. How long have you lived in Chicago?
A. Thirty-three years continuously.
Q. What is your business?
A. I am a speculator on the Board of Trade.
Q. Are you a member of the Board of Trade of the City of Chicago? A. Yes sir.
Q. How long have you been such member?
A. Well, something more that twenty years, I think.
Q. How long have you been dealing on the floor of the exchange room of the Board of Trade?
A. Oh, ever since I was a member. I have dealt on the Board of Trade for thirty years, and on the floor ever since I was a member.
Q. Is there any difference, any practical difference, in the dealings on the Board at the present time compared with what they have been twenty years, thirty years?
A. No, except perhaps a few details in the settlement of trades and so forth. The general character of the trade is the same now—
Q. And the general mode of conducting it is the same, except in the delivery notices, and the clearing house, is that about the only difference? A. Yes, I should think so.
Q. Have you always, on the Board of Trade, conducted about the same character of transactions?
A. Well, I was in the commission business for a short time.
Q. How long were you in the commission business?
A. About two years.
1052 Q. Was that in the beginning? A. No.
Q. When was it?
A. I think that was about 1885 or '6, somewheres along in there.
Q. Were the customers that you had while you were in the commission business generally city customers or country?
A. Both.
Q. In conducting that business for customers, did you charge them a commission? A. Yes sir.
Q. Did you require them to put up margins on deals?
A. As a rule, yes sir.
Q. How extensive was your business on the Board of Trade for customers?
A. Not very extensive. I did not devote as much attention to that as I did to my own affairs. My partner looked after that.
Q. Who was your partner? A. Charles W. Dunkley.

Q. In your own business, Mr. Wright on the floor of the Exchange room of the Board of Trade, how was that business conducted? A. Through Commission houses.

Q. And where were you? A. Usually on the floor.

Q. You would give your orders to other members of the Board of Trade and have them executed? A. Yes sir.

Q. Would you be standing there at the time and see what was going on? A. Not always.

Q. As a rule? A. No, not as a rule.

Q. As a rule were you on the floor? A. Yes sir.

Q. Where would your orders be executed with reference to the pits?

A. Why in the wheat pit, in corn, in the corn pit; in provisions, in the provision pit.

Q. Were your dealings usually in wheat, corn and provisions? A. My dealings usually were in provisions.

Q. What is the name given to the kind of business that you were doing there? Do you know anything about scalping?

A. Yes, I knew about it in a way. I never indulged in that sort of thing myself much. I am a speculator.

Q. What is a speculator on the Board of Trade?

1053 A. One who buys or sells stuff and waits for developments.

Q. How are the deals usually closed up?

Mr. Robbins: I object.

The Master: Wait a minute, unless you confine it to his own acts.

Mr. Jenks: Confine it to your own. How were they usually closed?

A. I give a man an order to buy or sell stuff that I was long or short.

Q. Then how would the deal be closed?

A. He would go and execute the order and then render me an account purchase and sale.

Q. What would be done as to the difference between the purchase price and the sale price?

A. Well, if I made a profit I would get a check. If I made a loss, I would give him a check.

Q. How extensive were your dealings as a speculator?

A. Very large.

Q. What do you mean by very large? Can you fix it by the day, week, month or year?

A. Well, I don't trade every day; I buy or sell a great big line of stuff and stay with it until I get tired or satisfied and then get out.

Q. And the stuff that you buy or sell is generally for a future option? A. Yes sir.

Q. Was it always for a future option? A. Yes sir.
Q. How were those transactions in future options as a rule, closed? Were they closed before the day of delivery arrived?

Mr. Robbins: Confining it to your own business.
A. Not always.

Mr. Robbins: Is that all, Mr. Jenks?
Mr. Jenks: Yes. Read the question. (Question read.)

Q. That is, as a rule. A. As a rule they were.
Q. What proportion of those transactions were closed before delivery? A. Nearly all of them.
Q. Can you give us a per cent of the transactions that resulted in delivery to you and payment for the commodity?
A. No, I cannot; I never paid for any stuff but three
1054 times I think, three or four times.
Q. Three or four times? A. Yes sir.
Q. In thirty years? A. Yes, sir.
Q. During the past year have you been dealing any?
A. Yes sir.
Q. And during that time, how much stuff have you received, delivered and paid for? A. None.
Q. During the year before, were you dealing then?
A. Yes sir.
Q. During that year, how much stuff did you receive pay for or deliver? A. Not any.
that
Q. During the year before, how was it?
A. I paid for none.
Q. How was it the year before that?
A. I have not paid for any stuff since 1892.
Q. Since 1892. Then you have not received any since 1892?
A. No sir.
Q. Have you delivered any since 1892? A. Not any.
Q. Now give us some idea of the extent of your dealings there in grain or provisions since 1892?
A. Well, from 1893 to 1895 or '6, I did very little. I was broke.
Q. Yes?
A. I failed in 1893. Since that I have traded more or less extensively.
Q. Well, can you give us an idea as to the extent of the deals, in bushels, or any other way?
A. I have traded in from twenty thousand to forty thousand barrels of pork most any time when the sign is right, and I feel right; I have traded in anywhere from 10 to 25 thousand

tierces of lard, and anywhere from a million to 10 or 12 millions of short ribs.

Q. Pounds, you mean?

A. Pounds, yes; then I occasionally trade in a half million or a million of wheat or corn.

Q. At the time of transactions in those commodities on the floor of the exchange room of the Board of Trade, what was your intention as to receiving and paying for that stuff?

Mr. Robbins: I object to that as immaterial.

1055 The Master. Overruled. Answer.

A. I understand the question. Did he say answer?

Mr. Jenks: Yes.

either

A. I had no intention of receiving or paying for it unless it was to my advantage to do so.

Q. What did the broker understand about that who executed your orders? A. I don't know.

Q. How frequently did you operate through the same broker? A. Oh, quite frequently.

Q. And take that same broker that you operated through quite frequently, did he ever deliver anything to you or call upon you to deliver anything to anybody else? A. No sir.

Q. Did he call upon you to pay anything but the difference in market price? A. That is all.

Q. Do you know about hedging deals on the Board of Trade? A. Yes sir.

Q. What class of people make hedging deals there?

A. Well, the packers all make hedging deals there.

Q. And those hedging deals are all made by packers after they have some hogs on hand or the product of hogs, by making a sale of something on the Board of Trade for future delivery, are they? A. Yes, sometimes before they get the hogs.

Q. When those sales are made as hedging deals what is the intention of those parties as to delivering the stuff that they sell as a hedge?

Mr. Robbins: That is objected to.

Mr. Jenks: Do you know how that is done, so that you can describe it? If you do, go on and describe that in your own way what a hedging deal is. A. I think I do.

Q. Just describe it in your own way.

A. They buy hogs, or expect to buy hogs, and slaughter them and they cut them up into various cuts, making a proportion of lard, and then they make sales of the product that they cut out of those hogs, and as they distribute the stuff to the customer they buy those sales in again.

1056 Q. And how do they settle them?

A. In the regular way, through the clearing house.

Q. Settle them on the difference in purchase and sale price on a hedge deal on the floor? A. Yes.

Q. Do you know anything about hedging deals by elevator men or cribbers of corn?

A. As a matter of general information, yes.

Q. Have you ever conducted any of those yourself?

A. No, never had anything to do with them,

Q. Have you ever had anything to do with the hedging of provisions like pork or hogs?

A. No, I never hedge any myself; I am a speculator.

Q. But you know how that is done? A. Yes sir.

Q. Has a sale for future delivery on the Board of Trade in a hedge, anything to do with the place where the person who has the commodity afterwards sells and distributes that commodity?

A. It has nothing to do with it, except to secure the seller against the risk of a rise or fall in the market.

Q. What I meant, was, does the man who has hedged his commodity by a sale on the Board of Trade, hold that commodity to be delivered on his hedging contract?

Mr. Robbins: I object to that.

Mr. Jenks: Or does he sell the commodity somewhere else?

Mr. Robbins: I object to that on the ground that the witness has said he has had nothing to do with a hedge, that he is a speculator, and that his answer under those circumstances would be a mere guess.

Mr. Jenks: Do you know about that, Mr. Wright?

A. I know in this way, that I have had conversations with men who did that, and they told me how they did it.

Q. Well, do you know in any other way how they did it?

A. I never did it myself.

Q. What is the difference, if there is, any, between speculation on the Board of Trade in Chicago and speculation off the Board?

A. There is no difference. Locality cannot affect
1057 the character of the transaction.

Q. The speculator is a man who is trying to get into a market and make money by the difference in the market price, isn't he?

A. Well, he buys stuff when he thinks it is worth the money; he sells the stuff when he thinks it is too high, and waits for an advance or decline.

Q. Is he really after the commodity, or he is merely after the difference in prices at which he buys and at which he can sell on that market?

A. Why, he is after the difference between the price that he buys or sells, and between the price at which he closes the transaction.

Q. Whenever you bought anything for future delivery on the Board of Trade, did you know whether you could sell that out at any time when you pleased and settle the two transactions, by either paying or receiving the difference between the purchase and sale price?

A. As a matter of experience, yes.

Cross-Examination

By Mr. Robbins:

Q. Mr. Wright, as I understand you, you never were connected with any of these packing establishments or in their employ? A. Yes I was.

Q. Well, how long since? A. How long since I quit?

Q. Yes? A. About eighteen years.

Q. You never did the hedging you speak of for these packers? A. Not personally, no sir.

Q. You then, are not in a position to know how much of the product they had at the time of the hedge they actually delivered on their hedges, and how much they sent out from any personal knowledge of your own? A. No.

Q. Well, then, if the price in Chicago, on the Chicago Board of Trade was higher at the time the product was ready for market and they desired to market it, the packers would sell, deliver or hedge it, would they not, rather than sell or deliver in the other market?

the

A. They would deliver it on contract if it was to
1058 their advantage to do so, otherwise they would not.

Q. On those hedging contracts? A. Yes sir.

Q. Whether they delivered or not would depend on their interest at the time they wanted to part with their property?

A. Yes sir.

Q. That is true of all hedging, isn't it?

A. I think it is.

Q. Is there any way of telling from the manner in which these hedging trades are made on the Board of Trade, by any person standing in the wheat pit, whether the contracts that are made of the character of hedging contracts or are of the character of what you call speculative contracts?

A. No sir, except from the nature of the business that the man is doing; he is a representative of a warehouse.

Q. Well, is there any way of telling between the hedging trades and those on which the deliveries are ultimately made, from those that will be taken in and settled? A. No sir.

Q. Is there any way of separating the quotations that arise under one of these three classes of transactions from those that arise under the others? A. No sir.

Q. These trades that you made were made, if you sold, were made through commission houses, you say?

A. Yes sir. I made a good many of them myself.

Q. When you made them yourself, did you turn them over to commission houses to be handled? A. Always.

Q. When you speak of deliveries, you speak of deliveries then between yourself and your commission house, do you not? A. Yes sir.

Q. You might have a settlement by the payment of the difference between the two prices from your commission house, and yet the trade remain open as between your commission house and the other members of the Board with whom they had made the trade? A. Yes sir.

1059 Q. You haven't any way of knowing what proportion of those trades, as between the members of the Board of Trade, your commission house and the other members of the Board of Trade, resulted in deliveries and those that resulted in settlements, have you?

A. As a matter of general, information, I have.

Q. I am speaking of these trades, that your commission house makes with the other members of the Board of Trade?

A. I don't know whether they received or delivered, but I know whether it is possible for a man to make a delivery or not.

Q. Are you the Wright that was a party to the suit of Wright vs. Cudahy reported in the 168th Illinois? A. Yes sir.

Q. 86?

A. Well, I don't remember—I think—yes, that is about the time.

Q. That is page 86? A. Oh, page; I don't know.

Q. You can look at that and see.

A. Oh, yes. There is no question about it at all.

Q. In that case the court decided, did it not, that you were engaged in running a corner? A. No sir, it did not.

Q. Didn't you testify that you were engaged in running a corner? A. No sir, I did not.

Q. What was that case? Was it a suit by you against John Cudahy to recover some money?

Mr. Jenks: I object to that question as not proper cross-examination.

The Master: Objection sustained. The case speaks for itself.

Mr. Robbins: That was the result of a deal on the Board of Trade, was it not, in which you and Mr. Cudahy,—

Mr. Jenks: I object to that question for the same reason.

The Master: He can connect it with this particular Board of Trade; that is all right; he may answer that.

A. Yes sir.

Mr. Robbins: In that deal, did you receive any property or actually deliver any property? A. Yes sir.

1060 Q. About how much?

A. I paid for 41,250 barrels of pork.

Q. Was that pork delivered upon these contracts of future delivery made on the Board of Trade? A. Yes sir.

Q. By whom were they delivered to you?

A. From the various parties of whom I had it bought. I cannot remember the names.

Q. Including the packing houses in Chicago.

A. I presume a good deal of it was bought from packers, yes all of it probably either directly or indirectly.

Q. Well, your say on this suit that you speak of you were not running a corner? A. No sir.

Q. And that you did not fail in that suit because you were running a corner? A. No sir.

Q. How long after this deal that you had and which figured in this law suit was it before you busted?

A. I failed on the first day of August, 1893.

Q. What did this deal that you had, that was connected with this litigation, have to do with your busting in August, 1893?

A. Well, there was too much pork and too little money.

Q. That is, in this deal? A. Yes sir.

Mr. Robbins: That is all.

Redirect Examination

By Mr. Jenks:

Q. Mr. Wright, you were asked by Mr. Robbins, as to whether these people who had commodities on hand and who made hedging deals on the Board of Trade, might deliver the commodities on those deals, and you answered that they might. If a man was hedging against hogs that he had on hand, or against hogs that he expected to buy, could he deliver those hogs on his hedging deals on the Board of Trade? A. No sir.

Q. In a normal market, I mean a market not affected by a corner or an attempted corner, where was it, and is it the interest of the hedging man to dispose of his commodity, on the Board of Trade, or somewhere else? A. To the consumer.

Q. And is a disposition of the commodity made on the Board of Trade? A. Yes sir.

1061 Q. To the consumer? A. Yes sir.
Q. On the Board of Trade?
A. Oh, not on the Board of Trade. They don't dispose of it at all there.
Q. Now when he disposes of it to the consumer, where is that disposition made?

Mr. Robbins: I object to this. This witness said he did not know, and has not had anything to do with this hedging business.
The Master: If he knows whether it is made on the Board of Trade, he can answer that,
Mr. Robbins: He asks him where the packers dispose of their property; of course if it is confined to that question it is all right.

Mr. Jenks: Do you consider yourself qualified to answer the last question? A. Well, read it. (Question read.)
A. Why, everywhere, where there is hungry mouths.
Q. That is, as to packers, they dispose of their stuff all over the [worls], don't they?
A. All over the [worls], wherever there is a demand for hog products.
[—] And in disposing of their property they don't pay any attention to the hedging contract that they have on the Chicago Board of Trade, do they?

Mr. Robbins: I object to that. That is asking the witness to guess at what packers do. He has said he had nothing to do with it.

The Master: Do you know of your own knowledge, or simply from hearsay, or reading reports and things of that kind?
A. I know from conversations with these men, and I worked for a packing house for ten or fifteen years and was inside of it every day.

The Master: He may answer.
Mr. Robbins: That is away back in 1883. If he will confine himself to that time I have no objection.

1062 The Master: For the fifteen years that you were connected with a packing house. Answer.
A. They sold stuff everywhere, and when they sold it they bought their sales in that they had made on the Board of Trade.

Mr. Jenks: And then they closed out those transactions how, the two transactions on the Board of Trade?
A. Well, before they had a clearing house they made settlements in various ways between themselves, and afterwards it was through the clearing house, the same as they do now.

Q. You were also asked by Mr. Robbins whether in your own deals on the floor that had been conducted by some other member of the Board of Trade, whether no property had been delivered to you on those deals, whether you knew that the other member of the Board had received or delivered any of the property connected with your deal there, and you said that you knew whether it was possible for a man to make a delivery. What do you know about that, the possibility of the stuff that you dealt in being delivered to your broker, the member of the Board who had made the deal for you?

A. Well, if a man makes stuff habitually, all the time, that is not in conformity to the requirements of the rules, it is not possible for him to make a delivery.

Q. Now what do you mean by that, as to your deals?

A. That has nothing to do with my deals.

Q. Do you know whether your brokers on the floor received or delivered commodities that were not delivered to you?

A. No, I don't know.

Q. Do you know whether it was possible for them to do it?

A. There is no broker makes any contract stuff now-a-days.

Q. What do you mean by that?

A. Well, take it in connection with short rib sides, for instance; the rule requires the back bone should be taken out; they take it out of none.

Q. That is to say, these packers do not make, out of
1063 hogs, a product that may be delivered on the Chicago Board of Trade?

A. They do not without cutting it over again, making it comply—making it in conformity to the rules. They don't tierce any lard any more. They carry it in tanks.

Q. As a matter of fact, do they make it over again and deliver it on the Chicago Board of Trade?

A. They do sometimes in case the market is higher on the Board of Trade than they can get for it anywhere else.

Q. As a rule, is the market higher or lower on the Board of Trade than it is anywhere else?

A. The speculative market is usually a little higher than it is at points of consumption.

Q. Then as a rule, do they deliver on the Board of Trade, or do they deliver somewhere else?

A. Oh, they distribute the stuff everywhere.

Q. They do not as a rule deliver it on the Board?

A. No sir.

Mr. Robbins: Now, I move to strike that out, because that is not confined to the fifteen years he has spoken of.

The Master: No, but it is confined to the Board of Trade.

Mr. Robbins: It comes right back to the other question that your Honor ruled on; if the other ruling is right, this is wrong,

and if this is right, the other is wrong. If it is confined to the time he was connected with the packers, that is all right, but to guess on what has happened since then—

The Master: I make a distinction between the dealings of those packers, with others, and their dealings on the Board of Trade. His knowledge as to their dealing on the Board of Trade extends up to the present time. His knowledge as to dealings of people outside of the Board of Trade I have limited that to the fifteen years. That is the distinction I made. He has bought and sold this stuff on the Board of Trade up to the present time, as I understand it.

Mr. Robbins: He said he had done that entirely through brokers, had not bought through the packers.

1064 A. Oh, I have bought and sold stuff myself.

Mr. Robbins: And he has not shown that he has been connected with any of these packers since he ceased to be a member, and that he has made no sales for them, or acted as their broker. Now he is asked to give his opinion as to what their business is.

The Master: As to what they do on the Board of Trade, I think he is competent. The answer may stand.

Mr. Jenks: You were asked about the Cudahy deal and the suit that you had against him. Was that John Cudahy?

A. Yes sir.

Q. What was that deal known as the Cudahy deal?

A. Well, we bought on joint account considerably over a hundred thousand barrels of pork.

Q. For delivery when?

A. For delivery in July and September 1893.

Q. And there were delivered on that deal 41,250 barrels of pork? A. On the first day of July, yes sir.

Q. And that deal broke both you and John Cudahy, did it?

A. Well, it broke me all right.

Q. And how about John?

A. Well, he failed, but he had a lot of trades in lard that I had nothing to do with.

Q. In that suit did John Cudahy claim that this transaction was a corner in pork, or an attempted corner?

Mr. Robbins: I object to that—what John Cudahy claimed.

Mr. Jenks: You asked him whether he did not claim that.

Mr. Robbins: I know, but that was simply to show the witness up.

Mr. Jenks: I want to show what it did towards beating him in the suit.

The Master: I do not think that is competent, Mr. Jenks. This is redirect.

Mr. Jenks: Yes, but it is on the subject matter he brought out anew.

1065 The Master: It was only for the purpose of showing the status of the witness.

Mr. Jenks: Well, is the objection sustained?

The Master: Sustained.

Recross-Examination

By Mr. Robbins:

Q. I understand you to say that there is no mess pork on hand in Chicago and has not been for some time, of the kind and character that is deliverable and covered by the future contracts on the Board of Trade?

A. Well, I wouldn't say that in connection with mess pork, but it applies to short rib sides. There is very little mess pork being made now-a-days. Very little. It is a thing of the past.

Q. Is that the answer to the question? A. Yes sir.

Q. You say that there is no—there has not been and is not now, and has not been for some time any lard on hand of the character— A. Not in tierces.

Q. And quality—

A. There is very little; a tierce of lard once in awhile.

Q. —that is deliverable on contracts, that you deliver on the Board of Trade? A. Very little. They carry it in tanks.

Q. That is, it is the same lard in tanks, instead of tierces?

A. Yes sir.

Q. Otherwise it is of the character for delivery?

A. Oh, yes, Oh, yes.

Q. And you say there are no short ribs, and have not been for some time on hand in Chicago of the character—

A. Almost none.

Q. And wherein does the short ribs on hand and in existence in Chicago differ from the short ribs that are deliverable on the Board of Trade?

A. The rule requires that the backbone shall be taken out and they don't take it out.

Q. Can you give the amount of pork that you took in and paid for at the time of this corner between you and Cudahy?

1066 A. I paid for 41,250 barrels of pork on the first day of July. That is my recollection now.

Q. You wish to be understood as saying, Mr. Wright, that the packers in Chicago do not deliver their product on future contracts made on the Board of Trade? A. Not as a rule.

Q. Answer the question.

Mr. Shea: Hasn't he answered it?

Mr. Robbins: Do you mean to say they do not deliver?

A. Not as a rule.

Q. What have you had to do with a single packer in the City of Chicago since—within the last ten years, since 1893?

A. Well, I buy and sell stuff, buy stuff of them and sell it to them frequently.

Q. Where is that done?

A. On the provision pit on the Board of Trade.

Q. Through commission houses? A. Yes, and myself.

Q. When you buy it yourself, are the trades carried through the commission house? A. Yes.

Q. So that all you do is to make the trade in the pit, and then turn it over to some commission house? A. Yes sir.

Q. What other connection have you had with any of the packers of Chicago, since 1893? A. Not any.

Q. Have you acted as broker for any one? A. No sir.

Q. Have you acted as commission man for any one of them?

A. No sir.

Q. Have you sold or made any contracts for sale for any one of them on the Chicago Board of Trade? A. No sir.

Q. Have you been present when contracts that they made on the Board of Trade were closed up?

A. Oh, I see them buying and selling stuff every day.

(Question read.)

A. I couldn't tell whether they were opening a trade or closing it.

Q. The only knowledge that you have received is the buying and selling in the wheat pit? A. Yes sir.

1067 Q. Does that close a trade as between the members of the Board or as respects the question of delivery or settlement? A. No sir.

Q. Now have you been present and seen a single trade of a single packer in the City of Chicago closed either by settlement or delivery, since 1893? A. No sir.

Q. Have you had anything to do with deliveries of property on the Board of Trade since 1893? A. No sir.

Q. Then how are you in a position to state how much of the property that the packers in Chicago, since 1893, have contracted to sell, for future delivery upon the Chicago Board of Trade, has been delivered and how much has not?

A. That is a matter of record, the deliveries. Every day you can hear what the deliveries are.

Q. Where is the record?

A. You ask people that are up there on the delivery and they will tell you what is going around.

Q. So the record is what people tell you?

A. So far as I am concerned.

Q. That is all the record you know of? A. Yes sir.

Q. And all you know about deliveries is what somebody has told you on the Board of Trade?

A. Well, the parties that are directly interested.

Q. The parties that are directly interested? A. Yes sir.

Q. And your whole testimony on the question of deliveries is based upon that knowledge is it, since 1893? A. Yes.

Mr. Robbins: Now, I move to strike out the testimony of the witness so far as it relates to how much property is delivered by packers upon their hedging contracts upon the Board of Trade since 1893.

Mr. Jenks: I object to the striking out.

The Master: It is stricken out.

Mr. Jenks: Are you through?

Mr. Robbins: Yes.

1068 Re-redirect Examination

By Mr. Jenks:

Q. Mr. Wright, is it known on the first day of the month what commodities are delivered?

A. Why, yes, it is generally talked about.

Q. Is it also reported somewhere?

A. I don't know whether it is or not.

Q. Take this month: Have you looked to see how much stuff was delivered on the second day of the month?

Mr. Robbins: You mean pork products?

Mr. Jenks: Yes.

A. No, I have not, but I understand they were very small.

Mr. Robbins: I move to strike that out.

The Master: It may be stricken out.

Mr. Jenks: How do you understand it?

A. Why, I always ask when I—ask the people that go up there on the delivery when they [—] down off the floor, or if I see them afterwards.

Q. And it is the people engaged in the delivery—

A. Yes sir.

Q. And you ask them? A. Yes sir.

Q. And that is the way you know, and that is the only way, is it? A. Yes sir.

Mr. Robbins: You simply asked them all, or those that you happened to meet?

A. I make it my business to go around and find somebody that knows about it, ask several to see whether they agree or not.

1069 William J. Fox, a witness produced on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

Q. What is your name? A. William J. Fox.
Q. Where do you live? A. St. Louis, Missouri.
Q. How long have you lived there?
A. About ten months.
Q. Where did you live previous to that?
A. Chicago, Illinois.
Q. How long have you lived in Chicago?
A. Twenty-two years.
Q. In what business were you engaged in Chicago?
A. Clerk.
Q. Clerk where? A. Chicago Board of Trade.
Q. On the Board of Trade, or with the Board of Trade houses? A. Board of Trade houses.
Q. With what houses were [were] you a clerk?
A. Walker & Company, McLain Brothers & Company, R. G. Merrill, and R. G. Zorge.
Q. What was the business of these respectively?
A. Walker & Company was a commission firm, McLain Brothers & Company were a commission firm; R. G. Merrill was a scalper, and R. G. Zorge was a scalper.
Q. What is the difference between a scalper and a commission man in his line of business?
A. A commission man trades for customers for a commission, a scalper trades for his own account.
Q. What was your business with Mr. Zorge? A. Clerk.
Q. What doing? What kind of work did you have to do for him?
A. Check trades, transfer trades, settle trades for him.
Q. Were you all the time in the office, or did your business for him call you somewhere else?
A. I was on the exchange floor during the time of the session.
1070 Q. What was you- position with Mr. Merrill?
A. Clerk.
Q. What were your duties as clerk, what kind of a clerk?
A. Check trades, transfer trades.

Mr Robbins: This is Merrill?
Mr. Jenks: Yes.

Q. Where was your place when you were with him, in the office or on the floor of the Board?
A. On the exchange floor nearly all the time during the session of the exchange.
Q. Did you know how Merrill and Zorge conducted their business there? A. Yes sir.
Q. How did they conduct it?
A. Well, they traded for their own account, that was all.

Q. What did they do when they traded? How did they trade?

A. They traded in wheat, corn—wheat and corn.

Q. How did they make a trade on the floor?

A. Go into the pit and make a trade.

Q. That is, make a bid or accept a bid that was made by somebody else for the purchase or sale of a commodity at the pit, is that it? A. Yes sir.

Q. How did they close up those trades that they made at the pit, do you know? A. Transfer or settle.

Q. What do you mean by transfer?

A. If they had five or ten or fifty wheat bought and sold at the same price, they transferred.

Q. Transfer it how?

A. To the two parties that has it bought and sold. If the man he had it sold to would have it sold to the man he bought of, the man he had it bought of would give it to the man he had it for.

Q. How was that transfer accomplished?

A. Down on the exchange floor, go down and give two different parties each other's names.

1071 Q. And then the transfer would be made. How would that affect the original party, Merrill or Zorge? What would be their position in the trade after that transfer?

A. He would not have the trade at all.

Q. What would that transfer be made for, what was the reason for making it? A. To save the revenue tax.

Q. Then the man who had the trades transferred would pay no revenue tax?

A. No—yes, sir; I answered that wrong; no, sir.

Q. That is, he would not pay any revenue tax?

A. He would not.

Mr. Robbins: I move to strike that out.

The Master: It may stand.

Mr. Jenks: Suppose the transfer was made, but not at the same price; how would it be settled so far as the person was concerned who asked for the transfer?

A. Pay us the difference in the price.

Q. Or receive it if it was due to him? A. Yes sir.

Q. How extensively did Merril and Zorge deal on the Board?

A. I should say over half a million a day on each side.

Q. Generally in what? A. In wheat.

Q. When was it that you were with them, what years?

A. I was with him in '96 and '97—no, I was with them part of '96, '97 and '98.

Q. In the whole bulk of dealings that they had there, what proportion resulted in actual delivery and payment of the stuff? A. In payment of the stuff?

Q. Yes? A. I remember only one case.

Q. What was that?

A. That was on five thousand wheat, when I was with Mr. Merrill.

Q. Out of the whole lot?

A. Out of all the time I was with him.

Q. Merrill and Zorge were both members of the Board of Trade were they? A. Yes sir.

1072 Q. And were they dealing there every day on the floor? A. Every day with but very few exceptions.

Q. When with reference to a purchase that either of them made on the floor would that transaction be closed out by a sale? A. Repeat the question. (Question read.)

Q. I mean by that, suppose they made a purchase to-day when, as a rule, was that purchase closed out?

A. The same day.

Q. With reference to those purchases, were they always for future delivery? A. Yes sir.

Q. Some future month? A. Yes sir.)

Q. Do you know of any of those purchases of commodities standing open until delivery day arrived?

A. For R. G. Merrill?

Q. Yes. A. It was a rare occasion to see one open.

Q. Or with Zorge?

A. Well, he would have some open once in a while.

Q. What per cent of the whole transactions would be open until delivery day, that Zorge had?

A. I should say about—less than one-tenth of one per cent.

Q. How extensive were the dealings of Walker & Company on the Board of Trade while you were with them?

A. It would not average a hundred thousand bushels of grain a day.

Q. How long were you with Walker & Company?

A. Three years.

Q. What was your position with them?

A. First as a messenger, and then a clerk.

Q. And as a clerk what part of the business did you have to attend to?

A. Taking care of trades in the option book, the clearing house sheet, ring book.

Q. Were you in a position so that you could know how the trades made by them were closed, whether by ringing up or by delivery? A. Yes sir.

1073 Q. As a rule how were they settled?

A. Settled by ringing them up.

Q. What proportion of their deals resulted in deliveries while you were there, I mean their transactions on the Board of Trade? A. About one per cent I should say.

Q. And how about the other firm that was doing a commission business, who was that?

A. McLain Brothers & Company. I don't know anything about their deliveries.

Q. What was your position there?

A. I had a telephone and was telephoning the orders, grain orders to the exchange floor, afterwards telephoning the stop orders to C. A. Wildman & Company.

Q. How much of the time while you were with any of these houses in Chicago were those different houses in receipt of the continuous market reports from the Board of Trade?

A. All of the time. I will answer that question different. R. G. Merrill and R. G. Zorge did not receive the quotations in the office at all, but the other two commission houses received the quotations all the time.

Q. Did the commission houses keep a blackboard?

A. Yes sir.

Q. Did they have any private wires?

A. McLain Brothers & Company had a wire—private wires?

Q. Yes. A. Yes, they both had a private wire.

Q. Where did those private wires extend to?

A. Different parts of the country.

Q. Did they also have customers in different parts of the country? A. Yes sir.

Q. Were the market reports sent over those private wires to their customers? A. Yes sir.

1074 Q. And their customers in their deals had the market reports? A. Yes sir.

Q. The continuous market reports? A. Yes sir.

Q. And both of those houses had blackboards?

A. Yes sir.

Q. Did they have chairs in front of the blackboards?

A. Yes sir.

Q. About how many chairs did each one of them have?

A. Walker & Company had about 12 or 15, and McLain Brothers had about—oh,I should say about 20.

Q. During business hours on the Chicago Board of Trade were those chairs occupied by customers, as a rule?

A. Yes sir.

Q. Were the market reports from the Board posted on the two blackboards? A. Yes sir.

Q. Then if there was a change in the market in any commodity, and the customer sat there in the chair, and saw that change and wanted to make a deal, how would he make it?

A. Well, for McLain Brothers & Company, he would come in to me and say, "I want to buy or sell," whatever the commodity was, at a certain price on the market; for Walker & Company's they had a man in there right in the front office.

Q. They would go in and say the same thing there?

A. Yes sir.

Q. Now, if the customer sitting there in front of the blackboard had a purchase of a commodity, and the market price of it changed, as indicated by the blackboard and the customer wanted to close out his deal, how did he do that?

A. Just tell whoever was taking the orders to close the amount and commodity at the price or at the market, as he saw fit.

Q. Then, how did the customer end the transaction, was there a payment of any difference of money?

A. He received the difference in the price.

1075 Q. If it was in his favor? A. Yes sir.

Q. And if it was the other way, then what?

A. He received the difference between the amount of money he had up, with the loss deducted and the commission.

Q. And the revenue stamp, or didn't they have them at that time?

A. Walker & Company at the time did not; at McLain's they did.

Q. Would they deduct the amount of stamp or tax?

A. Well, if the customer paid tax they would; some didn't, and some did pay tax. Those that did pay tax they deducted, those that they didn't charge any tax they wouldn't.

Q. Did customers close out their deals, without reference to whether your house had the deal open on the Board of Trade or whether it had been rung up? A. Yes sir.

Q. Now, we will suppose that Walker & Company had a deal on the Board of Trade for a customer, and that that deal was with Mr. Adams another member of the Board, when would that trade be rung up, if it was rung up at all?

A. As soon as we could ring it.

Q. Just as soon as they could ascertain that a ring was formed? A. Yes sir.

Q. They would ring it up. Then, if they had made a purchase there for a customer and had made a sale for another customer, and had not closed out those two contracts for their customers, would that make any difference in their ringing up the deal? A. No, sir, make a ring of it.

Q. Then, when they would ring up the deal on the Board of Trade that ends that transaction of purchase and sale, does it, as between the two members of the Board?

A. Yes sir—No, sir.

Q. What next is to be done?
A. Well, they figure the difference in the price between an agreed settling price on the two trades, and the difference is cleared through the Chicago Board of Trade Clearing House.
1076
Q. And when it is closed, it is closed by paying a difference either one way or the other? A. Yes, sir.
Q. And that ends the transaction, so far as the members of the Board of Trade are concerned? A. Yes, sir.
Q. But with the two customers, outsiders whose contracts may not have been settled, they remain open how long?
A. They remain open until the month of option expires.
Q. Well, unless something else is done. The case I gave to you is where one customer has bought and the other customer has sold. Now, do those two contracts remain open until the delivery day arrives, or may they be closed out in some way?
A. Not unless the customer, one or the other closes their trade.
Q. Suppose both of them want to, then what is done?
A. The trade would be settled.
Q. Settled how?
A. With the customer; difference in the price.
Q. Did you ever now in either of those houses that you were with, the commission houses, either one of them to deliver any commodity purchased on the Board of Trade to the customer and receive pay for it?
A. No, sir, I don't believe I remember of any.
Q. Did they ever receive anything from their outside customers and pay for it themselves? A. Not that I know of.
Q. Were you in a position so that you would have known that if it had been done?
A. I would in Walker & Company; I know it never happened there. At McLain Brothers I would be—
Q. Now, in Walker & Company, during the whole time you were there, they never did deliver anything to their customers, nor receive anything from their customers? A. No, sir.
1077
Q. Where did Walker & Company get the market reports that they had? A. Chicago Board of Trade.
Q. How did they come to their office? A. By ticker.
Q. Over a wire?
A. Over a regular ticker, no wire; we didn't have a wire.
Q. You had a wire connected with the ticker, didn't you?
A. Yes, sir.
Q. Do you know where the other end of that wire was?
A. No, sir, I don't.
Q. That is all.

Cross-Examination

By Mr. Robbins:

Q. How did you come up from St. Louis to Chicago?

A. Mr. Proudfoot sent for me.

Q. Mr. Proudfoot sent for you? A. Yes, sir.

Q. You are working for the Cella Commission Company, are you? A. Yes, sir.

Q. Mr. Miner is the manager of their business?

A. Yes, sir.

Q. Didn't Mr. Miner tell you to come?

A. He sent me, yes, sir.

Q. What? A. Told me to go, yes, sir.

Q. Told you to go? A. Yes, sir.

Q. Who is the Mr. Proudfoot that you speak of?

A. I don't know; he told me—Mr. Proudfoot is an attorney.

Q. When did you first know him?

A. I have known him for a year or two, I guess.

Q. He wrote you, asking you to come?

A. He telegraphed to Mr. Miner to send me.

Q. He telegraphed to Mr. Miner, and Mr. Miner told you to come? A. Yes, sir.

1078 Q. This Cella Commission Company with whom you are engaged has a suit pending in St. Louis brought by the Board of Trade, has it not?

Mr. Jenks: I object to that question as not cross-examination.

Mr. Robbins: (Continuing) Covering this same question of quotations, and you testified in that suit?

Mr. Jenks: I object to that question as not brought out in the direct.

Mr. Robbins: Isn't that true?

Mr. Jenks: Let's get the question. I want to object to it, as not a proper cross-examination of this witness.

The Master: Overruled.

(Question read.)

A. I don't know that—

Mr. Robbins: Q. What?

A. I don't know that the Cella Commission Company has that suit pending; I testified in that case; I suppose that they have.

Q. At the time that you testified there was such a suit pending, was there not?

A. I cannot answer that question; I don't know that there was a suit pending; I know that I testified before a Master in Chancery.

Q. In the suit brought by the Board of Trade against the Cella Commission Company?
A. I understand that is what it is.
Q. Weren't you sworn in a case of that name?
A. I was sworn before the Master in Chancery; I don't know.
Q. And who was the lawyer that examined you or cross-examined you in that case? A. Yourself.
1079 Q. Now, don't you know also that that suit that you testified in was a suit in which the Board of Trade sought to take away from the Cella Commission Company the quotations of the Chicago Board of Trade?
A. I understand that is what it is, I don't know.
Q. When did you go to work for McLain Brothers?
A. I think it was in January, 1899.
Q. When did you cease working for Zorge?
A. I don't remember exactly when that was.
Q. Did you go to work at McLain Brothers immediately upon ceasing to work for Zorge? A. Yes, sir, I did.
Q. Well, how long did you work for Zorge?
A. I don't remember exactly.
Q. Well, about how long?
A. I worked with Merrill and Zorge both at one time; they were both together; each one were paying half the salary. I think that was about—I think it was pretty near a year they were together; I cannot say positively.
Q. I understood you to say on your direct examination that you worked for them in '96 and '97. Now, which is right?
A. Well, I worked for Merrill all during '97 and I am sure Zorge was in a part of that time.
Q. All of '97? A. Yes, sir.
Q. Now, did you work for him in 1896?
A. I think I went to work for him in November or December, 1896, and went right on up to 1898.
Q. And how long did you work for him? A. For who?
Q. What? A. I don't understand the question.
Q. Merrill?
A. Worked for him from that time on to '99—July, '98.
1080 Q. To July, '98?
A. August, somewhere in there; then worked for Zorge, and then stayed with him until January, '99, but I was working for Zorge before that.
Q. You say that Mr. Merrill transferred his trades to escape the tax, do you?
A. As I understood it, just to save the tax.
Q. How much of that did he do? A. A day?
Q. How much transferring?
A. Four or five hundred thousand some days.

Q. And for how long did he transfer his trades to escape the tax?

A. I think he started from the time the revenue tax went into effect until I left him.

Q. When did you work for Walker?

A. I worked for him in '92, '3—well, from '93 on up to '96 until I went with Merrill.

Q. How old were you when you left Walker?

A. About 18.

Q. You were just a messenger boy?

A. When I first went with him I was. I worked on a salary before I left.

George F. Stone a witness recalled on behalf of the defendant was examined in chief by Mr. Jenks, and testified as follows:

Q. Will you state your full name? A. George F. Stone.

Q. You have been on the stand before in this case, have you not? A. Yes sir,

Q. You are secretary of the Board of Trade? A. Yes sir.

Q. And have been for how long a time?

1081 A. Over seventeen years.

Q. Is the Board of Trade of the City of Chicago or has it been since you have been connected with it, a dealer in provision or grain? A. No sir.

Q. Has it been a speculator in any kind of business?

A. No sir.

Q. Does it conduct any business at at all except in connection with the Board of Trade building and the ground upon which the building stands? A. It does not.

Q. The Board of Trade furnishes the exchange hall for the members of the Board to do their trading in, does it not?

A. Yes sir.

Q. The Board of Trade keeps that place for that purpose, does it not? A. Yes sir.

Q. The exchange hall. Mr. Stone, as secretary of the Board, do you keep, or are you in charge of, all of the records that the Board of Trade makes or keeps? A. Yes sir.

Q. Have you any record of the dealings between the members of the Board on the floor of the Exchange room?

A. I have not.

kept of

Q. Is there any record those dealings to your knowledge?

A. On the part of the Board?

Q. Yes? A. No sir.

Q. Or on the part of the members as connected with the Board?

A. Well, of course, we presume that the firms of the members make a record of their own business, but no record in the Board, no official record.

Q. The former question was, as connected with the Board?

A. Yes sir.

Q. Now, you don't know of any such? A. I do not.

Q. The members of the Board may keep a record of their own transactions for their own benefit? A. Yes sir.

Q. But they keep none for the benefit or information of the Board of Trade? A. No, they do not.

Q. Does the Board of Trade or anybody else to your
1082 knowledge keep a record of the transactions made on the floor of the exchange room, which transactions result in deliveries of commodities and payments for the same?

A. No record of that sort is kept by the Board.

Q. Is there any way in the world that you know, by which you could tell what amount of commodities are delivered between the members of the Board of Trade?

A. No way that I know.

Q. Or is there any way by which you can tell what amount of commodities are delivered by the customers of commission merchants members of the Board, to those members, or from those members to their customers?

A. I know of no such record, no sir.

Q. It there connected with the Board of Trade what is called the clearing house? A. There is.

Q. When was that clearing house organized?

A. About the year 1883, according to my recollection?

Q. Who organized the Board of Trade Clearing House?

A. The Board of Trade.

Q. And it is organized as a part of the Board of Trade, is is not?

A. Organized under the rules of the Board of Trade providing for the establishment and organization of the clearing house.

Q. Under whose management is the clearing house?

A. It is under the management of the Board of Directors.

Q. Do the Board of Directors manage that as an entire Board or have they a committee composed or a part of their number?

A. They have a standing committee called the clearing house committee, appointed by the Board of Directors.

Q. Do you know what records are kept in that clearing house?

A. No sir, there is a clearing house manager, that is in direct charge, under the direction of the Board of Directors, and the clearing house committee, of the clearing house. He keeps a record of the clearing house.

Q. Will you look at page 112 of a book which has marked on the back of it, "Board of Trade, Chicago, 1900."

A. 112, Mr. Jenks?

1083 Q. Yes? A. Yes sir.

Q. And state of you know who compiled the matters which are contained on that page?

A. They are compiled in the clearing house of the Board of Trade, under the direction of the manager of the clearing house, Mr. Samuel Powell.

Q. What had you to do, if anything, with causing that to be printed, on that page, 112?

A. I have ordered it to be done, directed it to be done.

Q. Was not this whole book compiled and arranged by you?

A. Yes sir.

Q. Do you know anything about the truth of the items contained on this page of the book?

Mr. Robbins: You mean, does he have personal knowledge of their truth? A. I do not.

Mr. Jenks: Is there anybody to your knowledge who knows anything more about these statements contained on that page than Mr. Samuel Powell, the manager of the clearing house?

A. I don't think there is, who knows anything more about it.

Q. And do you know anybody else who knows anything about the truth of it?

A. Well, there must be some of Mr. Powell's clerks who are able to say that they know, with reference to these statements, and as to whether they are true or not.

Q. I will come right down, Mr. Stone, to the point that I wanted to ask you about, but I thought when I commenced this examination that you knew about it, perhaps you don't know anything about it. At the bottom of that page in this item, $62,227,165.25. I want to know from you whether you know how that item is made up? A. I don't know, Mr. Jenks.

Q. Do you know how the next item, is made up, at the right, $22,821,284.05? A. No sir.

Q. You don't know how that is made up?

A. I do not.

1084 Q. Mr. Stone, will you look at pages 176 and 177 of the same book; you will find there a statement headed "Grain Crops of the United States, 1900." Who compiled what is contained in those two pages?

A. As estimated by the United States Agricultural Department as stated.

Q. Did you cause that statement to be entered in this book?

A. Yes sir.

Q. Is that statement taken as a true statement of the condition?

A. Yes sir, it is taken for just what it professes to be, as estimated by the Agricultural Department.

Q. Will you look at page 5 of that book? A. Yes sir.

Q. At a matter which is headed, "Flour and Wheat, Receipts and shipments of these products during 1900 by routes." What do you know as to the matters contained on that page, I mean the truthfulness of those matters?

A. Well, I know that those figures of receipts and shipments of flour and of wheat on and by these various transportation lines were given me by those transportation lines in my official capacity, and published accordingly.

Q. Have you any means of knowing whether any other flour and wheat than that stated on that page, was received in the city of Chicago, or shipped out of said city?

Mr. Robbins: What time are you speaking of?

Mr. Jenks: 1900.

Mr. Robbins: In the year 1900?

Mr. Jenks: Yes.

A. These statements of receipts and of shipments I have no doubt comprise all the receipts and all the shipments of those articles on and by these various transportation lines.

Q. That does not exactly answer the question, Mr. Stone. What amount of flour was received in the city of Chicago and shipped out of the city, by barrels, during the year 1900?

A. 9,313,591 barrels of flour received and 7,396,697 barrels shipped.

Q. What amount of wheat was received in the city of
1085 Chicago and shipped out of the city during the year 1900?

A. 48,048,298 bushels received, and 36,649,956 bushels shipped.

Q. I will ask you what amount of—what number of bushels of corn were received in the city of Chicago and what number shipped out of the city during the year 1900?

A. 134,663,456 bushels received and 111,099,653 bushels shipped.

Q. Where do you find that? A. On page—

Mr. Harkless: Just ahead of the page we had.

A. Two and three, Mr. Jenks: Your previous question as I understood it, was for me to mention the page where the receipts and shipments of corn will be found?

Mr. Jenks: That wasn't a question for the record. I asked that for myself.

Q. Now these items that you read, on what page do you find them?

A. You will find the receipts on page two, and the shipments on page three.

Q. Mr. Stone, will you state how much was paid out by the Board of Trade in the year 1900, for gathering market reports on the floor. You may look at page 43 in the commencement of the book. A. 63 wasn't it?

Q. 63, yes, the next to the last item on that page.

A. The next to the last item is $814.51.

Q. Yes sir. Is that the amount paid out by the Board of Trade in consequence of the quotation department?

A. Well, that does not include all the money that was paid out on account of quotations and quotation service of all markets.

Q. Oh, no, I am speaking, Mr. Stone, of merely gathering these market reports on the floor of the exchange room. There was a little time in 1900 when the Board employed the clerks to gather the market reports, wasn't there? A. Yes sir.

Q. Something like two months or less than two months.

A. Yes sir.

1086 Q. Now isn't that $814.51 what it cost the Board of Trade to employ those clerks, and the expenses about gathering the market reports on the floor?

A. Well, I should have to look into the detail of that account to answer accurately that matter.

Q. Who made the figures of this matter that appears on Roman numeral page sixty-three, of this same book and which is headed, "Report of Board of Directors"?

A. The assistant secretary, Mr.—

Q. You did not? A. I did not.

Q. And you don't know anything about the truth of what is here stated? A. Not personally.

Q. Who was that assistant? A. R. S. Worthington.

Q. Is he up there now? A. Yes sir.

Q. Do you think he knows about it? A. Yes sir.

Q. I want him here then, and I will not examine you about that.

Mr. Jenks: Mr. Robbins, in order to avoid making a large record here, I want to put in pages, 176 and 177 of this book heretofore referred to, entitled "Grain crops of the United States, 1900."

Mr. Robbins: It covers from 1891 to 1900?

Mr. Jenks: Well, yes, the bottom of it. Now, I don't care anything about that. I just want the 1900 part. That is not the page that you have referred to, is it?

The Witness: Yes sir, that is the page, Mr. Jenks, that you referred to before.

Mr. Robbins: Do you want it by states, Mr. Jenks?

Mr. Jenks: Just as it is there. I am going to suggest what appears on page 112 of this book and what appears on page 10 of the book, on page 5 of the book, and on the Roman numeral pages 63 and 64, and I will suggest that we stipulate that instead of writing this into the record, either one of us, either party may, on the hearing in Court, read from these pages what he wants, if that is agreeable to you.

1087 Mr. Robbins: What do you want in the last item?

Mr. Jenks: I want what is there.

Mr. Robbins: I haven't any objection to that, Mr. Jenks.

Mr. Jenks: Then it is so stipulated.

Mr. Robbins: 63 and 64, but I think you had better have it in the record.

The Master: Have the page in your record, is that the idea?

Mr. Robbins: Yes, cut out two of these pages and paste them in.

Mr. Jenks: Then I would just as leave take the pages right out here and put them in, except in some cases it is printed on both sides of the leaf.

Mr. Robbins: Yes, you will need two books.

Mr. Jenks: Very well; then we will have that done.

Mr. Robbins: I suggest that you make note of those and I will consider it.

Mr. Jenks: I want to know now.

Mr. Robbins: I will tell you when I get through with this witness. I will develop by that time what I want in this book.

Mr. Jenks: You will, eh? You think you can make more out of the witness than I can?

Mr. Robbins: No, but there may be other things I want to go into this stipulation.

Mr. Jenks: Maybe you can make more than I.

Mr. Robbins: Are you through?

Mr. Jenks: No.

Q. Mr. Stone, how many members of the Board of Trade are there? A. There are about eighteen hundred members.

Q. And the number is about the same that it has been for several years past? A. Well about the same.

Q. How many of those members are members of the

1088 Board of Trade Clearing House? A. I don't know.

Q. Do you know what is required in order to make them members of the clearing house? A. Yes sir.

Q. Then can you tell me why all the members of the Board of Trade are not members of that clearing house?

A. There are some members of the Board of Trade who do not need the facilities of a clearing house and therefore are not members of it.

Q. Now what do they have to do, to become members of it?

A. They have to make an application for membership in the clearing house.

Q. Are all members of the Board of Trade who desire to be members of the clearing house? A. Not necessarily.

Q. What do you mean by that answer?

A. I mean that the application is referred to the clearing house committee, one of the standing committees of the Board.

Q. Are there some members who make application to that committee to become members of the clearing house, refused membership? A. None that I know of.

Mr. Jenks: That is all.

Mr. Robbins: I have got some parties to see at the noon hour and I promised to spend it with them. I will take up the cross-examination at two o'clock.

And thereupon, at 12:30 o'clock P. M. an adjournment was taken until 2:00 P. M. of the same day, December 5th, 1901.

December 5th, 1901, 2 o'clock P. M.

1089 Parties met pursuant to adjournment.

George F. Stone resumed the stand for cross-examination by Mr. Robbins, and testified as follows:

Q. Mr. Stone, these rules that have been introduced in evidence here, were they new on June 19, 1901?

Mr. Jenks: I guess you had not better do that on my examination.

Mr. Robbins: I will make him my witness for that purpose if you wish. I want to straighten that out.

Q. Does that imply that these rules were new at that time?

A. No sir.

Q. This book of rules that has been introduced in evidence, what do you say as to the age of those rules—are they new rules? A. Some of them are very old rules.

Q. The great majority of them, are they new or old?

A. Old, been standing for many years.

Q. What was the stock of mess pork, winter packed and prime steam lard in store in Chicago during the year 1900?

A. What page is that?

Q. That is 57. A. What did you say, for the year?

Q. Yes. If you can give it better by months, give it by months.

A. Well, it was in January 106,594 barrels; in February 102,527; March, 96,795; April 92,028; May 82,223; June, 76,047; July, 70,825; August, 64,806; September, 53,878; October, 42,005; November, 26,821 barrels; that was amongst the stock for the year 1900.

Q. Did you read December? A. 16,583.

Q. And what were the stocks of prime steam lard in store?
A. In the month of—
1090 Q. That is barrels, is it that you have just given?
A. Barrels.
Q. What are you giving now, tierces?
A. I am giving lard in tierces: 104,852 in January; February 112,017; March, 105,249; April, 84,252; May, 90,692; June, 120,233; July, 117,718; August, 97,432; September, 49,896; October, 11,259; November, 17,092; December, 44,247 tierces.
Q. That is the prime steam lard in tierces?
A. Prime steam lard in tierces.
Q. What number of cars were received, cars of grain were received in Chicago and inspected during the year 1900?

Mr. Jenks: What page is that?
Mr. Robbins: 39.

A. 278,089 cars of grain inspected during 1900.
Q. Is that exclusive of grain received by lake and canal?
A. Yes sir.
Q. What was the elevator capacity of the public elevators?
A. Regular under the Board of Trade rules, regular?
Q. The public elevators of Chicago which were declared regular under Board for the year 1900? A. 28,400,000.
Q. Bushels? A. Bushels.
Q. What were the receipts of grain of all kinds in the City of Chicago during the year 1900?
A. The receipts of grain and of flour in its grain equivalent during the year 1900 in Chicago aggregated 349,637,295 bushels.
Q. What were the total shipments of all kinds of grain from the City of Chicago during the year 1900?
A. Of flour and its grain equivalent 265,452,245 bushels.
Q. How much of that was flour, the equivalent of flour or represented by flour?
1091 A. There were represented by those shipments 7,396,697 barrels.

Mr. Jenks: Where are you reading from?
Mr. Robbins: 21.

Mr. Jenks: Are you reading from page 21?
A. I am reading from page 3, but the same corresponding statement is probably found elsewhere. These statements all agree. There are different tables of shipments. I am reading from the first column of figures, statement on page 3.

Mr. Robbins: He needn't take that down.
Mr. Jenks: Yes sir, take it down. I asked where he was reading from.

M. Robbins: I thought you asked for your own information.

Mr. Jenks: I did, but I want it down there. I may want to find it some other time.

Mr. Robbins: Did you give on your direct-examination the total number of bushels of wheat received in Chicago during the year 1900? A. Yes sir.

Q. And the total shipments for that year? A. Yes sir.

Q. And also corn? A. Yes, sir; I gave corn also.

Q. What annual report issued by the Board of Trade of Chicago have you been referring to to get these figures?

A. That is 1900.

Q. What is its serial number? A. 43rd.

Q. That is the 43rd annual report?

A. 43rd annual report of the Board of Trade of the City of Chicago.

Q. How many packing houses are there in the City of Chicago? A. I don't know.

Q. How many packing houses are there that have qualified as warehousemen under the rules of the Board of Trade?

1092 A. Well, approximately I should state that there were about twenty.

Mr. Jenks: How many? A. About twenty or thirty.

Mr. Robbins: Q. Do you mean 20 or 30 firms, or 20 or 30 different warehouses? A. Different warehouses.

Q. And you mean by that warehouses that have made themselves regular for the delivery of their product under the rules of the Board of Trade? A. Yes, sir.

Q. And how many different public grain warehouses have become regular under the rules of the Board of Trade?

Mr. Jenks: You asked him that once before.

Mr. Robbins: No, I asked the capacity, and not the number.

Mr. Jenks: All of this you make him your own witness. This is not cross-examination.

Mr. Robbins: No.

Mr. Jenks: Then I object.

Mr. Robbins: I am going into this Board of Trade business you have been referring to.

Mr. Jenks: You are taking your own gun—making ammunition for yourself, are you? I object to the question as not proper cross-examination.

The Witness: That is on page 38.

Mr. Jenks: I am willing that book should go in, such parts of it to be used as either party may desire, but I object to the

witness testifying from that book upon your cross-examination on matters that were not brought out on the direct examination.

The Witness: 21.

1093 Mr. Robbins: Q. Did you include flax in your aggregate at all? A. No sir.

Q. What is the total receipt of flax in this market during the year 1900?

Mr. Jenks: I object to that as not proper cross-examination.

A. 4,898,513 bushels.

Mr. Robbins: And the shipments for that year?

Mr. Jenks: I object to that as not a proper cross-examination.

A. 3,266,481.

Mr. Jenks: What page is that? A. 90.

Mr. Robbins: Now, on this I make Mr. Stone my witness.

Q. A witness this morning testified that he worked for the firm of McLain Brothers. Is that firm or its members members of the Board of Trade? A. No sir.

Q. Were they ever? A. Yes sir.

Q. When did they cease to be?

Mr. Jenks: I object to that. Well I don't object to that.

A. Well, I don't know when the date was, about two years ago.

Q. When was it?

A. I think about a couple of years ago, three years perhaps.

Mr. Robbins: Why—under what circumstances did they cease to be members at that time?

Mr. Jenks: I object to that question as improper, irrelevant and immaterial.

A. They were—

Mr. Jenks: Wait a minute. The question is objected to. Don't answer until the Master rules upon it.

Mr. Robbins: Have you any questions to ask him?

1094 Mr. Jenks: Yes sir.

Mr. Robbins: Well, go on and let that question rest.

Mr. Jenks: Is that all you want of him?

Mr. Robbins: That is all the cross-examination. I may want to follow up that particular line.

Mr. Jenks: This part of it, your matter better be put after my cross then.

The Master: What is the question objected to?

(Question and objection read.)

Mr. Jenks: In this case.

Mr. Robbins: Mr. Stone is my witness on that question.

Mr. Jenks: The reason for the objection is this: The witness that was on the stand this morning at one time was in the employ of that firm. They were members then of the Board. Since then according to Mr. Stone's statement they have ceased to be members, but the reason why they ceased to be members is not a part of the issues in this case, and has nothing to do with the testimony of the witness that was on the stand this morning.

Mr. Robbins: The witness was asked about the methods of business of McLain Brothers.

The Master: I understand, Mr. Robbins, the evidence of the witness this morning, tended to show that McLain Brothers conducted their business according to the rules of the Board of Trade. I think it is competent to show why they left the Board.

A. They were expelled from membership in the Board.

Mr. Robbins: For what reason?

Mr. Jenks: I object. They have a record of that, or ought to have. If there is any such thing, then his testimony is not the best testimony.

1095 Mr. Robbins: If this witness was present at the time they were expelled, he can testify to that.

Mr. Jenks: No, sir.

The Master: Was this by action of the Board of Directors?

A. Yes sir, by action of the Board of Directors.

Mr. Robbins: Were you present at the time the action was taken? A. Yes sir.

Q. Were you present during the trial? A. Yes, sir.

Q. Were McLain Brothers present? A. Yes, sir.

Q. Now, what was the reason that they were expelled?

Mr. Jenks: That is objected to.

The Master: Overruled.

A. Dealing in differences on the fluctuations of the prices of commodities traded in on the floor of the exchange without a bona fide purchase.

Mr. Robbins: Can you indicate what if any rule—

A. Yes, sir, if you will give me a copy of the rules.

Mr. Jenks: If you are going to put a question, I wish you would before he answers.

Mr. Robbins: Any rule they were expelled for violating?

Mr. Jenks: I object to that question as not competent in this case. The rules are in evidence here, and they show for themselves what they are, and I would rather have them than the opinion of this witness. That calls for an opinion of the witness.

The Master: I think the answer of the witness states sufficiently. The rules are all in evidence.

Mr. Robbins: And the grounds I think should be given by the witness.

1096 The Master: He has given the ground; now, you can connect it with any rule that is sufficient to cover it.

Mr. Jenks: I want to say right here—the Master has ruled on one question, but I want to say for the information of the Master as to all subsequent questions, that the only action that a Board of Directors of a corporation can take and they can prove anything about in any sort of case, is such action as is taken and reported and appears in the record book of the corporation, and I insist here that those records are the best evidence, and that this evidence is not competent from this witness.

The Master: It is a collateral question. I think for a primary question it would be right.

Mr. Jenks: And because it is a collateral matter, it is not material in this case?

Mr. Robbins: That is all.

Redirect Examination

By Mr. Jenks:

Q. Mr. Stone, at what time in the year 1900 was there any prime steam lard in tierces in the City of Chicago and at what particular places were those tierces?

A. There was a stock of prime steam lard in store in the City of Chicago, on the first day, business day of each month of the year 1900 in the houses, storehouses declared regular store houses for the storage of provisions, under the rules of the Board of Trade of the City of Chicago, and the requirements and regulations of its Board of Directors.

Q. Did those warehouses have a name? A. Yes, sir.

Q. What was the name of one of them in which there were tierces of prime steam lard, on the first day of March?

1097 A. I could not give you the name now.

Q. Could you give me the name of any warehouse that had any prime steam lard in tierces, on the first day of any month during the year 1900?

A. Yes, our provision warehouse under the proprietorship of Swift & Company and Armour & Company, and the Chicago Packing & Provision Company.

Q. Where are those places? A. At the Stock Yards.

Q. Were you there? A. No, I was not there.

Q. Were you there in 1900? A. No, sir.

Q. And did you ever see any tierces of prime steam lard in any one of those warehouses? A. I never did.

Q. Now, you consider your evidence pretty reliable, don't you, as to the fact that on a certain day they had in these warehouses some tierces of prime steam lard? A. I think so.

Q. When as a matter of fact you absolutely know nothing about it, of your own knowledge? A. The Board of Trade—

Q. It is true you know nothing about it, of your own knowledge, isn't it?

A. Under the rules and regulations of the Board of Trade a statement is made each month, on the first business day of the month of the quantity of lard and other articles of provisions in store in regular warehouses, declared regular under the rules of this Board. Those statements are made by the parties in charge, and under the direction of the management of those various warehouses, under oath, and is made to the chief registrar of provisions, elected to that office under the provisions of the rules of the Board, and formally posted for the benefit of the public, and those statements have never been [questions] and they are received by those who are interested in the purchase and sale of those articles, as reliable,
1098 and that justifies me in my view of saying that we had what is in those warehouses on the first business day of the month as published and made up from those various reports so obtained.

Q. Where are those reports?

A. On file in the Secretary's office.

Q. On file in your office?

A. And published in this report.

Q. Wait a minute, Mr. Stone. You talk freely this afternoon. Are they on file in your office? A. Yes, sir.

Q. How long since you have seen one of them for the year 1900?

A. I see them every month; I have seen them every month. The last one I saw was the first of this month.

Q. What one was that?

A. That was the stock of lard in these regular warehouses on the first—last day—first day of the month of December.

Q. Mr. Stone, don't you know that the question was as to 1900? A. Yes sir.

Q. Well, now, when did you last see any of those reports for 1900? A. At the close of 1900.

Q. Now, Mr. Stone, of your own knowledge, you didn't see a single tierce of lard in any warehouse, did you?

A. No, sir, I did not.

Q. And of your own knowledge, you don't know that there was a single tierce of lard there?

A. I didn't see the lard.

Q. Well, of your own knowledge you don't know that it was there do you?

A. I am satisfied that it was there, although I did not see it. I have no doubt it was there.

Q. And you don't know anything about it except what somebody else said to [—] reported? A. No sir.

Q. Now, do you know this Mr. Stone, that lard is often reported as being in tierces when it is not in tierces at all?

A. I don't know that.

1099 Q. Do you know as a matter of fact that lard, instead of being put in tierces now-a-days, is put up in some other kind of package?

A. I have no doubt that it is sometimes put up in some other form.

Q. Do you know that in that other form they estimate it as so many tierces, when it is not in tierces at all? A. No sir.

Q. You don't know that?

A. No, sir. I have never seen it in any other form, any more than I have ever seen it in tierces.

Q. Now, as to grain in public elevators, do you know of your own knowledge how much there is there, how much there was there in 1900, confine yourself to your own knowledge?

A. Well, I consider that I know, that I know how much grain there was in store.

Q. Were you in any one of the grain elevators in the year 1900? A. No, sir.

Q. Did you see any of the grain in any of the elevators in the year 1900? A. No, sir.

Q. So all you know about it, is what somebody told you or what somebody reported to you? A. From official reports.

Q. That is all you know about it? And the same way as to flour?

A. The information that gives me confidence in the figures presented showing the stock of grain in the store—

Q. Do you think, Mr. Stone—

A. Excuse me. I hadn't finished the sentence—is derived from the returns of the State Department, State Grain Inspection Department, and the Registrar of Grain.

Q. Yes, sir, but I am asking you about your own knowledge. I will get to the State Department and all that by and

by. You don't know anything about it of your own knowledge, do you? A. I wasn't in the elevator, and haven't seen it.

Q. I can read reports, perhaps not as well, but pos-
1100 sibly well enough myself? A. Yes.

Q. And all you know about that you get from reports, don't you? A. Official reports, yes.

Q. Now, the total receipts and shipments, you don't know anything about that of your own knowledge, do you? You only know from reports? A. Yes, sir that is all, from reports.

Q. Now, about packing houses that are made warehouses, do you know where there is any record of 20 to 30 of them in number? A. Yes, sir.

Q. Where is it?

A. In the Secretary's office of the Board of Trade.

Q. Is it in that book that you have there? A. No, sir.

Q. How many of those packing houses did you ever see?

A. Never saw—oh, ever see—well, I could not say; I have seen some of them; how many I couldn't say.

Q. Did you see any of them in the year 1900—I think you have said you were not there?

A. I don't remember to have seen any of them in the year 1900.

Q. How much of the grain in store in the year 1900 was of grade number two, do you know? A. I do not know.

Q. How much of the grain that was in store in Chicago in the year 1900 was of a lower grade than number two?

A. I do not know.

Q. How much of it that was in store was of grade number one? A. I don't know.

Q. In wheat of a less grade than number two, is it deliverable on Board of Trade contracts? A. No, sir.

Q. Is any grain of a lower grade than that named in the rules of the Board of Trade deliverable on Board of Trade contracts?

A. Not except it is so expressly defined and under-
1101 stood between the parties.

Q. Then, if the parties understand it, they may deliver and receive any kind of grain of a less grade than that named in the rules of the Board? A. Yes, sir.

Q. And as to that grade the rules of the Board do not apply?

A. The rules of the Board apply to the delivery of grain of any kind when that grain is expressly understood to be the grain in the contract.

Q. You just said that the parties might agree to have it something else, didn't you? A. Yes.

Q. Then if they do agree to have it something else, the rules of the Board don't apply?

A. Yes, they do provided that that contract can be carried the
out by delivery of a lower grade of grain than what we call number two, if the parties so understand the matter.

Recross-Examination

By Mr. Robbins:

Q. Mr. Stone, are the sources of your knowledge, with respect to statistics that you have given on cross-examination, the same as the sources of the knowledge upon which you have based the statistics that you gave Mr. Jenks upon direct examination? A. Yes, sir.

Q. Are the sources of information of the statistics you have given on cross-examination the same as the sources of your information respecting page 176 and 177 of this report of 1900? A. Yes, sir.

Q. You do as the secretary collect these statistics and supervise the publication of this book? A. Yes, sir.

Q. That has been referred to by Mr. Jenks and myself for these figures? A. Yes, sir.

Q. And that book you have referred to in giving your figures? A. Yes, sir.

1102 Mr. Jenks: Q. What book is it that you have referred to in giving your figures?

A. The 43rd annual report of the Chicago Board of Trade for the year 1900.

Mr. Jenks: I will ask the reporter to mark that report for identification.

Said book was thereupon marked Defendant's Exhibit A. 12-5-1901, C. A. B.

William S. Warren, a witness produced on behalf of the defendant having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

Q. I will ask you your full name? A. William S. Warren.

Q. Where do you live Mr. Warren? A. In Chicago.

Q. How long have you lived in Chicago?

A. I have lived in Chicago since 1869, with the exception of an interval of about ten years.

Q. Are you in any way connected with the Board of Trade of the City of Chicago?

A. I am the President of the Board of Trade.

Q. Were you connected with that Board of before you were President of it? A. Yes, sir.

Q. How long have you been President of the Board?

A. Since January, 1900.

Q. What is your business besides holding that office?
A. I am in the commission business.
Q. Under what name?
A. Hulburd, Warren & Company, Incorporated.
Q. How long have you been in the commission business?
A. Since 1877, with the exception of the interval I spoke of before.
1103 Q. And all the time has that institution been a corporation?
A. No, sir, my connection with that institution began in 894 I think.
Q. Previous to that time, what was the style of your firm?
A. Warren & Company.
Q. And the firm was composed of—
A. Myself and my brother.
Q. How long did that firm exist and do business on the Board of Trade in the City of Chicago? A. About nine years.
Q. Then was that firm- business merged into the corporation of Hulburd, Warren & Company? A. No, sir.
Q. The corporation was formed absolutely independent of the firm of Warren & Company? A. Yes, sir.
Q. When did you become interested in the corporation?
A. In 1894.
Q. Who are the officers of that corporation?
A. At present?
Q. Yes?
A. I am president, Mr. A. C. Davis is its vice-president, Mr. Charles H. Hulburd is its treasurer, Mr. C. J. Northup is secretary.
Q. Who is the manager of it? A. I am.
Q. How long have you been its manager?
A. Since it was formed.
Q. Where is the office of that corporation?
A. Room 47 in the Board of Trade Building.
Q. How long has it been there?
A. Since its organization.
Q. That is since the organization of your company?
A. Yes, sir.
Q. Does that corporation have a blackboard? A. No, sir.
Q. Has it ever had? A. No, sir.
Q. Has it private wires? A. No, sir.
Q. Did it ever have? A. No, sir.
Q. Will you state what books are kept by your corporation?
A. We keep the usual books of account of a com-
1104 mission firm, ledger, journal, cash book, purchase and sales book.
Q. Do you keep a ring book? A. Yes, sir.
Q. An option book? A. No, sir.

Q. Do you keep a customer's option ledger?
A. We keep a futures ledger.
Q. What do you mean by a futures ledger?
A. A ledger wherein is entered the sales for future delivery.
Q. For customers? A. Yes, sir.
Q. As a rule where are your customers located?
A. Well they are pretty well distributed over the country, I have customers in New York City, and in San Francisco, and in a great many places in other towns, in cities; I have customers in Chicago.
Q. Do you keep a settlement book? A. Yes, sir.
Q. What is entered in the settlement book?
A. Settlements of contracts.
Q. How are the settlements made that are entered in the settlement book?
A. They are made by our settling clerk, by off-setting.
Q. You keep a settling clerk then? A. Yes, sir.
Q. What are the duties of that settling clerk?
A. He keeps the record of the purchases and sales; he keeps the settlement book; he has charge of margin calls.
Q. What are margin calls?
A. Calls for the deposit of money for the protection against the fluctuations of the market.
Q. Do you do business on margins?
A. We call margins, certainly.
Q. Do you charge a commission? A. Yes, sir.
Q. Does the settlement clerk have anything to do about ascertaining whether there are rings or not?
1105 A. Yes, sir; the settlements are usually brought to the office given to the settling clerk.
Q. Does the settling clerk go upon the floor of the exchange room of the board? A. Not in that capacity.
Q. Did I ask you in what capacity he went?
A. He does go upon the Board, yes, sir.
Q. What does he go there for?
A. He goes for—in the main part to deliver messages, errands.
Q. What besides the main part? A. Sir?
Q. What does he go there for besides the main part?
A. Well, I couldn't give you any other answer. He has no regular occupation upon the floor of the exchange. He is sent down there on various errands occasionally from the office, on a messenger's badge.
Q. Do you ring deals as soon as they can be rung up?
A. No, sir.
Q. Don't ring them up at all? A. He takes them—
Q. I mean does your corporation ring up deals as soon as they can be rung up?

A. They ring them up in the regular course of business as they are brought to the office.

Q. What do you mean by the regular course of business?

A. As the settlements are made by the settling clerks.

Q. Is the matter of ringing up deals there a regular course of business? A. Yes, sir.

Q. Are those deals that are rung up in the regular course of business settled by a mere payment of difference between the two prices of purchase and sale?

A. They are settled by the payment of a difference based on the settling price of the day.

Q. Then they are not settled on the difference between the purchase and sale price?

A. They are settled at the settling price of the day.

1106 Q. Who fixes the settling price of the deal?

A. An employee of the Board of Trade.

Q. From what does he fix it? A. I think he takes it—

Q. I don't want you to tell unless you know?

A. I don't know.

Q. How long have you been there?

A. On the Board of Trade?

Q. Yes? A. Since 1871, excepting ten years.

Q. How long have you had a man to fix the settling price there? A. I don't know.

Q. Have they had him for the past 20 years?

A. I don't know.

Q. Have they had him or the past ten years?

A. I don't know.

Q. Have they had him for the past five years?

A. I think they have.

Q. Who is he? A. I don't know.

Q. Did you ever know who he was? A. No, sir.

Q. Who hires him?

A. The Secretary of the Board I think.

Q. Do you know? A. No, sir.

Q. You don't know? And you don't know what he fixes the settling price from? A. Yes, sir.

Q. What? A. I do.

Q. What does he fix the settling price from?

A. The average market price of the day.

Q. How do you know he does that?

A. My settling clerk so informs me.

Q. Do you know everything of your own knowledge that your settling clerk informs you of?

A. That is the best knowledge I have on the subject, Mr. Jenks.

Q. Yes. But I asked you if you know of your own knowledge, and I asked you that because you answered once
1107 that you didn't know of your own knowledge. Very well. What has the settling price to do with your ringing up deals?

A. The payment of differences is based upon the settling price.

Q. How is it based upon the settling price?

A. Through the clearing house.

Q. How is that done?

A. Well, I am not doing the settling for my firm, Mr. Jenks. I do not know that I can go into the minutia of the business for you.

Q. You haven't been a member of the Board long enough or done business enough there to know how it is done?

A. I know in a general way that these differences are adjusted by the settling clerks every day upon the settlement price posted upon the exchange.

Q. Yes?

the

A. And that differences are adjusted through the clearing house.

Q. That is right. Now, how is it done?

A. It is done by the payment of a check for the balance, or the receiving of a check.

Q. The balance of what? A. Sir?

Q. The balance of what?

A. The balance that is due or payable on the settlements of the day.

Q. How does there happen to be anything due or payable?

A. The differences, the payments arise out of the difference in price between the purchases and the sales which you have passed through—which have been settled during the day.

Q. I thought so, but a little while ago you told me that was not so. You told me the settling price had something to do with it? A. That is very true. Both are facts.

1108 Q. Very well. Now, we will take one of them. I am going to find out how you arrive at a settlement?

A. I will try and tell you if I can. I don't promise to.

Q. Well, do you know? Answer that first.

A. I am not in the business of making settlements, Mr. Jenks.

Q. But do you think you know how your own trades are settled? A. Well, I have an idea in my own mind, yes.

Q. Now, how are they? Just tell us how they are settled.

A. Well, if I have bought of you five thousand bushels of wheat for May delivery, and sold it to Mr. Robbins, and Mr. Robbins has in turn sold it to you, we make an off-set of those

trades, and each one pays or receives, as the case may be, the difference, based on the settling price of the day.

Q. How do you arrive at a difference, based on the settling price? A. I don't understand your question, Mr. Jenks.

(Question read.)

A. I will have to get a pencil and paper and figure it out, will you?

The Master: Take an illustrated case will you, Mr. Warren?

Mr. Jenks: I will lend you a pencil.

(Witness figures.)

Q. Mr. Warren, I want you to tell it so that we can have it written out, so that somebody else will be able to understand it from what you say.

A. Mr. Jenks, that is the form of the settlement (producing paper).

The Master: Just dictate it to the stenographer.

Mr. Jenks: No, describe it so that these reporters can write it down.

1109 A. Warren has sold to Jenks 5 thousand bushels wheat at 79 cents; Jenks has it sold to Robbins at 79½, it

Robbins has sold to Warren at 80; an offset is made of those trades, and the differences are settled through the clearing house on a basis of a settling price of say 79½.

Q. Who says 79½? A. The Board of Trade.

Q. Well, all right. Now, you send a clearing house sheet to the clearing house the next morning, don't you? A. Yes, sir.

Q. And you state on that clearing house sheet that there is owing to you how much?

A. Well, in this instance I would be a debtor.

Q. Well, then, I put in a clearing house sheet and I state there is owing to me how much? A. $25.

Q. Robbins puts in one and he says there is owing to him how much? A. $25.

Q. Who from? A. From the clearing house.

Q. You put in one that you owe how much?

A. Fifty dollars.

Q. Who to? A. The clearing house.

Q. Then all three of us would send in a clearing house sheet? A. Yes, sir.

Q. Two of us would say that we claimed from the clearing house so much? A. Yes, sir.

Q. You would put in one saying that you owed to the clearing house so much? A. Yes, sir.

Q. What would those amounts of claim and debit arise from?

A. From the difference in price in the purchases and sales.

Q. Now, I will suppose that you sold to me to-day five thousand bushels of wheat for May delivery, I to-day sold to Robbins five thousand bushels of wheat for May delivery,
1110 he to-day sells you five thousand bushels of wheat for May delivery. When is that rung up between us three?

A. At any time between now and the 30th day of May, 31st day of May.

Q. You can ring it up to-morrow morning? A. Yes, sir.

Q. And pay those differences and receive them through the clearing house? A. Yes, sir.

Q. Now, we three are members of the Board? A. Yes, sir.

Q. Supposing that in that same transaction you had a customer, and say that customer is Mr. Whitney; he ordered you to sell five thousand bushels of May wheat which you sold to me. You have another customer, and we will say that other customer is Mr. Shea. He orders you to buy five thousand bushels of May wheat; now, we will say that that transaction between you, me, Mr. Robbins and yourself grew out of those two orders, and that Mr. Whitney and Mr. Shea were not members of the Board. We will say that is to-day. To-morrow Mr. Whitney orders you to buy that wheat that you have sold for him. What will you do?

A. I would go on the market and buy it.

Q. Then suppose that was the only transaction Mr. Whitney had with you and he wanted to get out and stay out. How would you close that up with him?

A. I would render him an account purchase and sale and assume the contracts myself.

Q. What contracts ?

A. The contracts for the purchase and sale that I had made on his order.

Q. Where have you got any in the case I cited?

A. If I have not those I have others.

Q. Have you? Now, we will suppose that Mr. Shea
1111 wants to close out his, and he orders you to buy in his wheat; what do you do?

A. I go in the market and buy it.

Q. And how do you close it out with him?

A. In the same manner.

Q. In the same manner as what?

A. As I did with Mr. Whitney.

Q. That is, if each one of them make money, as a profit, on the difference between the purchase and sale price, you would give each one of them your check?

A. For the net profit, yes, sir.

Q. After taking out the commission, and everything else?
A. The war tax.
Q. Now, suppose each of them lost money, what would you do? A. I would collect it of them if I could.
Q. Yes. And that that you collected would be the difference between the purchase and sale price, deducting the commission and war tax?
A. Adding the commission in this case.
Q. Well, adding the commission and war tax?
A. Yes, sir.
Q. Then if they had put up any margin to begin with you would give them what was left of that wouldn't you?
A. Yes, sir.
Q. Now, you say that in both of these cases you have rung up your deal on the board, mind you, by this set-off, in the had trade that you had with me. and I with Robbins, and Robbins had with you, and you have rung that up. Now, you have had only these two orders here. You say that you still have got two contracts open, one of the purchase and one of sale?
A. I didn't say so. If I did, I didn't understand the question. In the suppositious case which you have given, the whole thing—
Q. The whole thing is ended? A. Yes. sir.
Q. And we will say the initial transaction was to-day, and the closing out of the whole business was to-morrow,
1112 and this deal was a purchase for May delivery, then that whole business would have been conducted from beginning to end and settled on the mere difference in the market price, wouldn't it? A. Yes, sir.
Q. And all of the members of the Board conduct their business in the same way where the trades are the same as you have described, I mean where the customers give the same sort of orders and you are able to make the ring in the same way?
A. Every member of the Board, Mr. Jenks.
Q. Yes, all of them who do that kind of business, do they do it in the same way?
A. That is the general course of business, yes, sir.
Q. How extensive a commission business does your corporation do on the board and has it done since it was organized?
A. I couldn't answer the question positively, Mr. Jenks. I can answer approximately.
Q. Yes, approximately?
A. I think we buy and sell perhaps in the neighborhood of 60 million bushels of grain in a year.
Q. And sell the same amount?
A. Buy and sell I said, yes.

Q. That is to say you buy 30 millions and sell 30, or 60 millions of each?

A. No, I would say about 60 millions both sides. It is not in all cases bought on the market for future delivery, or sold for future delivery. We buy grain sometimes for future delivery and take it out of the store and ship it, and again we receive grain on consignment from the country.

Q. I am talking about your commission business?

A. This is the commission business.

1113 Q. The buying for future delivery, buying or selling for future delivery, about how extensive is that business?

A. Well, it would run somewhere from 50 to 65 millions a year. That is as near as I could approximate it.

Q. Of all grains? A. All kinds, yes, sir.

Q. What kind of grain principally?

A. Well, that depends on the season, Mr. Jenks.

Q. Well, running through the year? A. Sir?

Q. Running through the year?

A. Well, some years we will handle more wheat than anything else; other years we will handle more corn.

Q. Well, we will take the wheat. You buy and sell wheat every year on the Board of Trade for your customers?

A. Yes, sir.

Q. And do that on commission?

A. Yes, sir. And buy and sell the wheat for some future option or month.

Q. Of delivery.

A. We buy it for cash and for future delivery.

Q. Let us have the future delivery, that that is purchased for future delivery. What per cent of it do you receive, actually receive and give your own check for?

A. Well, that varies very frequently.

Q. How much would it average in a year?

A. I should think it would average fifteen per cent.

Q. Does it average more now than it did a year ago?

A. Not that I know of.

Q. Didn't you testify a year ago that it would average about ten per cent?

Mr. Robbins: I object, as cross-examining his own witness. You cannot impeach a witness you call that way, Mr. Jenks.

Mr. Jenks: This witness is one that comes from the Board of Trade.

1114 The Master: I consider him a hostile witness.

Mr. Robbins: That is all right. You can ask him leading questions, but you cannot impeach him.

The Master: You can simply ask him whether he did or no', but you cannot impeach him if the answer is wrong, that is all. You can ask him the question.

Mr. Robbins: I don't understand when you call a witness you can ask impeaching questions at all. You can ask leading questions of a hostile witness, but you are asking questions that are impeaching.

(Question read.)

A. I don't know what I testified to a year ago.

Mr. Jenks: Whatever you did testify to a year ago was true to the best of your knowledge at the time?

Mr. Robbins: I object to the question.

The Master: Overruled.

A. I certainly would not testify to anything that I did not consider the truth, Mr. Jenks.

Mr. Jenks: Now, in the past year have you been dealing extensively on commissions in futures?

A. We have done about our average volume of business in the past year.

Q. On an average, about how much a day have you traded in in grain? A. About 200 thousand bushels.

Q. For the whole year? A. Per day, yes, sir.

Q. Per day? A. Or business day.

Q. 200 thousand bushels a day, that would be a fair average for the past year? A. I think so, yes sir.

Q. In that business what would be a fair average of the per cent that resulted in deliveries, and what would
1115 be a fair average of per cent that resulted in set-offs or rings and closing through the clearing house?

A. Well, deliveries will vary so much in different months, Mr. Jenks, that that is a very difficult question to answer; I would say not less than ten per cent was delivered, and in some instances as high as thirty per cent and upwards was delivered.

Q. When did you commence dealing in this month, December options? A. I don't know.

Q. Cannot you state pretty near?

A. No, I couldn't undertake to say without looking at my books, Mr. Jenks.

Q. Well, about what was the extent of your deals in December options this year? A. I don't know.

Q. When was the delivery day for December options this year? A. Any day since the first of December.

Q. And tell us the day where the largest deliveries are usually made?

A. There is no regularity in that respect, some days they occur on the first day of the month, at other times they are scattered through the month.

Q. You don't know that it is policy on the part of the seller to deliver the commodity at the first opportunity, do you?

A. I know that that is not always his policy.

Q. Well, you know as a rule it is not his policy?

A. There is no hard and fast rule in that regard, Mr. Jenks.

Q. Has your observation taught you that the most of the deliveries on the delivery month are the first of the month?

A. Well, I should say in the majority of instances.

Q. Will you tell how much wheat you received on the second day of this month and paid for with your own check?

A. I don't know.

1116 Q. Can you make a fair estimate of it?

A. My impression is that we did not receive any.

Q. How many trades had you in December options previous to the first of this month? A. I don't know.

Q. Can you give us any estimate of the amount, of the number and the amount involved?

A. Do I understand you to mean the total amount of our transactions, or the total amount of outstanding contracts on the first of December?

Q. No, sir, the total amount of the transactions?

A. All told?

Q. Yes, in December options?

A. I couldn't give you an estimate Mr. Jenks.

Q. You have a book, haven't you? A. Yes, sir.

Q. What one of your books would show that?

A. Our Purchase and Sales Book.

Q. Have you any objection to producing that book here?

A. No, sir.

Q. Have you any objection to refreshing your recollection by the book, so as to state the quantity that you dealt in from the time you commenced to deal in December options, clear down to the time you ceased to deal in December options?

A. We are dealing in them still.

Q. Well, all right, how much have you bought to-day for December delivery? A. I don't know.

Q. How much have you sold for to-day? A. I don't know.

Q. How much have you bought or sold this month for December delivery? A. I don't know, sir.

Q. How much grain of any kind have you delivered to anybody else this month and received their check for it?

A. I don't know.

Q. You have said you didn't receive any?

1117 A. I think I said that my impression was that we received none on the second day of December.

Q. Have you received any this month and paid for it?

A. Yes, sir.

Q. When? A. I could not give you the date.

Q. I wish you would produce your option book?
A. We don't have any such book, Mr. Jenks.
Q. Well, your book showing futures, then? A. Yes, sir.
Q. I call that an option book?
A. That is not what we call it.
Q. It is usually called that, isn't it?
A. That I don't know. Options are out.
Q. Your customer's option ledger, have you such a book?
A. Yes, sir.
Q. Your purchase and sale book, do you keep one?
A. Yes, sir.
Q. Do you also keep a separate book, showing deliveries and receipts? A. Of cash grain?
Q. Deliveries and receipts of grain?
A. I think we do, yes sir.
Q. Will you produce that, too?
A. Yes, sir. I wish to reserve one thing, however, Mr. Jenks. I will not allow my customer's ledger to be examined. I will not divulge the business of my customers unless the court so rules.
Q. I don't want anything about the names of the customers, I don't care anything about that. Will it take you long, if you have the book here, to make a fair estimate of the amounts dealt in between certain dates?
A. Well, it might take me a good while. If you will be content with the examination of one of my clerks I could give it to you very shortly.

1318 Q. I will tell you what I want: I want the amount of grain of the different kinds that you dealt in during the year 1900, and down to this December option, for customers on commission and future delivery. I want the amount of the trades you made on the Board in filling those orders; I want to know how those trades that you did make on the Board in filling those orders were closed out, and the quantities so closed; I want the amount and number in those trades which remained open on the second day of this month?
A. You are referring now to December trades?
Q. To the December options? A. Only?
Q. Yes. Now, if you can have that figured out for you so that you can state the amount, I will take your statement from what your bookkeeper tells you, if he tells you from the book?
A. I will do that, yes, sir.

Mr. Robbins: You mean 1901, I guess, Mr. Jenks. You said 1900.

Mr. Jenks: I mean 1900, what I think I said, too. But of course down to the present time, 1901.

Mr. Robbins: The information that you want from him now covers 1901.

Mr. Jenks: It covers 1900 and 1901.

A. I think I understand, Mr. Jenks: He wants all the trades that we have in December options and December futures, no matter when they were made, running back through 1901, and back into 1900. The probabilities are there are none in 1900, but if there are that will be included in the statement.

Mr. Robbins: You mean trades for December, 1901, for delivery in December?

1119 Mr. Jenks: I want to show, Mr. Warren, the extent of your deals on the Board for 1900 and 1901, for customers in futures, and I want to know how much of the commodity dealt in, and how many of the contracts relating thereto were closed out by actual delivery and how many were closed out by set-offs, and settlement through the clearing house?

A. You mean every delivery during those two years, every month during those two years?

Q. So as to get at the total, that is all I care for?

A. That will be a matter of some time. It will take probably [take] two or three days to reach all that.

Q. Well, how long would it take you to reach that during this year?

A. Well, it would take at least a day to do that. It involves a great deal of clerical work.

Q. Well, you can state now, cannot you, about what your dealings in futures on the Board of Trade have amounted to per day during this year?

A. I have already stated approximately.

Q. Now, can you state approximately how much, or what per cent of the commodities dealt in were actually delivered to you, and paid for by you?

A. No, sir I would not undertake to make a statement without an examination of the books.

Q. Well, how long would it take to have that examination made? A. I think I could have it by to-morrow afternoon.

Q. Cannot you have it to-morrow morning?

A. I think not, sir.

Q. Well, will you make it so that we can have it to-morrow afternoon then? A. Yes, sir.

The Master: And do you want December in addition?

Mr. Jenks: What is that?

The Master: Do you want the December deliveries in addition?

1120 Mr. Jenks: December up to the present time. What I am after is the amount of deliveries made in your dealings in futures, in your dealings for cash, present delivery, and

for cash, I don't ask you about that. You have both kinds of deals, haven't you? A. Yes, sir.

Q. Are your deals in cash transactions usually made on the Board of Trade? A. Some of them.

Q. Well, it is a small proportion of them, isn't it, the cash transactions?

A. Yes, sir, it is less than our future dealings.

Q. No, a small proportion of the cash transactions that are made?

A. Oh, we buy more cash grain in the country than we do in Chicago, yes, sir.

Q. That is what I am after. You don't buy very much cash grain on the floor, do you?

A. Oh, we buy considerable at times.

Q. Now, the cash grain that you buy on the floor, do you do it yourself? A. No, sir.

Q. You don't know whereabouts on the floor it is done, then, do you? A. Yes sir.

Q. Where is it done?

A. It is done sometimes in the same place that the future dealing is done; at other times it is done down among the tables in what we call the cash crowd.

Q. Well, you have a place for the cash crowd. It is very seldom done at the pits, isn't it? A. Rather seldom, yes, sir.

Q. Now the market for dealing in futures on the floor of the exchange room opens at what hour? A. Nine-thirty.

Q. And the place for that is at the pit? A. Yes, sir.

Q. The market for dealing in cash stuff opens at what hour?

A. The car-lot market opens about 11 o'clock, half-past eleven.

Q. And that is over by the tables?

1121 A. Yes, sir, round lots of cash grain are dealt in at any time of the day or evening, however.

Q. Not on the floor? A. Yes sir.

Q. In the evening on the floor?

A. On the floor while the room is open.

Q. Is it in the evening on the floor? A. No, sir.

Q. What I mean is this, Mr. Warren, that you are not at all confined to the floor of the exchange room in buying cash orders? A. No, sir.

Q. You buy those wherever you can find them, wherever you meet the man? A. Yes.

Q. During the same day is there usually a difference in the price of commodities for future delivery and the same commodity for cash?

A. Yes, sir; there is nearly always a difference.

Q. There is always a difference in the price?
A. Generally.
Q. Do you know what makes that difference in price?
A. It is a variety of reasons; some times scarcity makes cash grain worth more than the future, again a plenty makes a future worth more, which is accounted for by the fact that it costs money to hold it, carry it, pay the carrying charges.
Q. Do you know how the market reports are gathered on the floor of the exchange room of the Board of Trade?
A. Yes, sir.
Q. Who gathers them?
A. Employees of the Cleveland Telegraph Company.
Q. From what place do they gather them?
A. They are gathered in the places where the dealing is going on.
Q. At the pits?
A. Yes, sir, with respect to the dealing that is being done in the pits.
Q. Where do they gather those that are sent out as continuous market reports? A. At the pit.
1122 [—] How long has the Cleveland Telegraph Company been gathering those reports?
A. Since the first of August, 1900.
Q. Did the Western Union Telegraph Company, to your knowledge ever gather those reports on the floor of the exchange room of the Board of Trade? A. They did.
Q. When? A. Prior to June, 1900.
Q. In June, 1900, was the Western Union Telegraph Company contracted with for a different arrangement?
A. No, sir.
Q. Where is the Cleveland Telegraph Company organized, do— A. I think in West Virginia, Mr. Jenks.
Q. Had you anything to do with its organization?
A. No, sir.
Q. Do you know who had? A. No, sir.
Q. Do you know who is connected with it now?
A. I know that Mr. Crawford is the manager of it.
Q. Is that all that you know about it? A. Yes, sir.
Q. Do you know whether that company has any lines of wire?

Mr. Robbins: I object to that as irrelevant. We are not on the cross-examination of Mr. Warren, we are on direct examination.

The Master: Objection overruled.

A. What is the question? (Question read.)
A. I do not.

Mr. Jenks: Q. Do you know whether it has any telegraph instruments?

Mr. Robbins: Same objection.
The Master: Objection overruled.

A. Yes, sir, it has.
Mr. Jenks: Q. Where?
1123 A. It has two that I know of in the rooms of the Board of Trade.
Q. Where are they?
A. One is at the wheat pit where the service originates; another is in the visitors' room.
Q. For what is that one in the visitor's room used?
A. For carrying quotations, receiving quotations.
Q. For what is the other one used?
A. For sending quotations.
Q. One is used for receiving, and the other for sending?
A. Yes, sir.
Q. Do you know how the quotations get to that one that is used for receiving?
A. They are passed to the operator from the person who takes the quotations, written on a piece of paper.
Q. That is the one that they use for sending out the quotations isn't it? A. Yes, sir.
Q. Now, you have got one for receiving them, you say, where is that? A. That is in the visitors' room.
Q. Well where do those quotations come from that are received in the visitors' room? A. They come from the sender.
Q. Sender where?
Q. The sender of the quotations at the other instrument.
Q. The other instrument on the Board of Trade?
A. Yes, sir.
Q. How far apart are those instruments?
A. About three hundred feet, in that neighborhood.
Q. What does the man do with them when he receives them at the receiving instrument?
A. He marks them upon a blackboard.
Q. In the visitors' room? A. Yes, sir.
Q. Then those two instruments are connected by a wire?
A. I think they are.
Q. And that wire is in the Board of Trade building there, there on the floor of the exchange room?
A. Yes, sir, it is in the building.
1124 Q. It runs from the main floor of the exchange room to the visitors' room?
A. It is in the building. I couldn't trace it for you, Mr. Jenks; I never saw it; I know it must be there.
Q. The only wire that you know that that company has is that wire which is right in the Board of Trade building?
A. That is all I know of my own knowledge.

Q. Now, Mr. Warren, with whom did you make any agreement with the Cleveland Telegraph Company?
A. I don't think I made the agreement.
Q. Who do you think did make it?
A. I think it was made by Mr. Robbins:
Q. When? A. I don't remember.
Q. With whom did he make it? A. I don't know.
Q. Who did he do the talking with? A. I don't know.
Q. Did you ever talk with anybody representing the Cleveland Telegraph Company about the arrangement?
A. Yes, sir.
Q. With whom? A. Mr. Crawford.
Q. Who were present at the time?
A. I don't remember. I talked with him a great many times.
Q. When was the first time? A. I don't remember.
Q. Who employed Mr. Crawford?
A. What is the question, please?
Q. Who employed Mr. Crawford? A. I don't know.
Q. Who directs him? A. In what respect?
Q. About market reports? A. I don't know.
Q. You have nothing to do with market reports?
A. Very little.
Q. Do you have them in your office? A. Yes, sir.
Q. How do you get them? A. By ticker.
Q. Where do they come from?
A. They come over the wire of the Cleveland Telegraph Company.
1125 Q. Who owns the ticker or who rents it to you?
A. The Cleveland Telegraph Company.
Q. The Cleveland? A. Yes, sir.
Q. What sort of a ticker have you?
A. What sort of a ticker?
Q. Yes?
A. We have a ticker that prints the quotations upon a narrow tape. I could not describe it to you in technical terms.
Q. Does not the ticker belong to the Gold & Stock Telegraph Company? A. No, sir.
Q. You rent it from the Cleveland Telegraph Company?
A. Yes, sir.
Q. By the year? A. By the month.
Q. By the month. Who do you pay for it?
A. The Cleveland Telegraph Company.
Q. Are there any more of that kind of tickers in the Board of Trade building? A. Yes, sir.
Q. Do you know who rents those?
A. They are rented by the members of the Board of Trade.
Q. Do you know from whom?

A. From the Cleveland Telegraph Company I presume. I have no knowledge of any one's business except my own.

Q. How long from the time that the market reports leave the exchange floor before they are represented from the ticker in your office? A. I don't know.

Q. Have you any way to estimate the time?

A. It is a very brief time.

Q. How much, ten seconds?

A. Well, the man would have to be in two places at one time to estimate that time, Mr. Jenks.

Q. Well, you don't know? A. No, sir.

1126 Q. Do you know whether the same market reports by their tickers around this town are indicated at the other tickers at the same time that they are at yours?

A. No sir, I don't know whether they are or not.

Q. You [are] President of the Board of Trade never made any agreement with the Cleveland Telegraph Company?

A. I signed a contract with them.

Q. When did you sign the contract with them?

A. I couldn't give you the date, I don't remember.

Q. When did Robbins have a contract with them with reference to the time that you signed the writing?

A. I don't know.

Q. Did Robbins make a contract with them after you signed that paper?

A. Well, the contract must have been made before it was put to paper, and it was signed after it was drawn.

Q. Was any other contract made after that paper was drawn that you signed? A. With whom?

Q. The Cleveland Telegraph Company and the Board of Trade? A. Not that I remember of.

Q. Would you know it if any had been made?

A. I should know it, yes, sir.

Q. Then you say that none was made subsequent to that—

A. There was a contract made, yes sir. I recall the circumstance.

Q. Was that verbal or written.

A. No, this second contract was made with the Chicago & Milwaukee Telegraph Company. I have no recollection of more than one contract being made with the Cleveland Telegraph Company.

Q. Would you say there was none made subsequent to the writing which you signed?

1127 A. I wouldn't say there was none made, no, sir. I say I don't remember.

Q. You don't know any of the stockholders or officers of the Cleveland Telegraph Company? A. No, sir.

Q. Did you ever talk with any of them?

A. Not that I know of.

Q. Did you ever talk with any representative of that company, except with Mr. Crawford? A. No, sir.

Q. You have talked with him? A. Yes, sir.

Q. Does the Board of Trade pay out anything for those market reports at the present time? A. No, sir.

Q. How long since it has paid anything on account of the market reports? A. In what way?

Q. Paid cash for gathering them?

A. For gathering them?

Q. Yes? A. Since the first of August, 1900.

Q. Has the Board of Trade received anything from the Cleveland Telegraph Company on account of those market reports that the Cleveland Telegraph Company gathers?

A. They have received it by that means and the Cleveland Telegraph Company has paid these expenses for gathering them.

Q. Has the Board of Trade received more than that from the Cleveland Telegraph Company? A. I think they have.

Q. Do you think the Board of Trade has received, or did receive during the year 1900 from the Cleveland Telegraph Company on account of the market reports, from August first to December first, the sum of $2874.78?

A. Between what dates?

Q. August first and December first?

A. I couldn't testify to that, Mr. Jenks.

1128 Q. But you know that the Board of Trade has received cash from the Cleveland Telegraph Company?

A. Yes, sir.

Q. You don't know how much? A. No, sir.

Q. Who paid that money?

A. Paid by check from the Cleveland Telegraph Company.

Q. Who delivered the check? A. I don't know.

Q. How do you know it was paid by check?

A. I have seen the checks.

Q. Are those checks received monthly? A. No, sir.

Q. Have you seen any checks from the Cleveland Telegraph Company this year? A. Yes.

Q. Amounting to how much? A. I don't know.

Q. Is there any record of it?

A. On the books there must be, yes.

Q. What books? A. The books of the Board of Trade.

Q. Who keeps those books?

A. Mr. Worthington, the assistant secretary.

Q. Are they under the control of the Secretary?

A. Yes, sir.

Q. Has Mr. Robbins, Henery S. Robbins, any interest in the Cleveland Telegraph Company to your knowledge?

A. Not that I am aware of.

Q. Do you know whether he tried to sell the company, sell the property of the Company?

A. He never did to my knowledge.

Q. Did he try to turn that affair over to the Western Union Telegraph Company? A. He never did to my knowledge.

Q. Did you and Robbins together try to make a deal with the Western Union Telegraph Company relating to the Cleveland Telegraph Company? A. We did not.

1129 Q. Never at any time? A. No sir.

Q. Did you and Mr. Robbins have a talk with Col. Clowry about that? A. No, sir.

Q. Mr. Warren, what record is kept by the Board of Trade to show the transactions that are made on the floor of the exchange room? A. None.

Q. What record is kept anywhere, either in the clearing house or on the Board of Trade in any place to show what commodities are delivered and what commodities are rung up and settled through the clearing house?

A. By the Board of Trade?

Q. Or the clearing house?

A. By the Board of Trade or any of its—

Q. By the Board of Trade or anybody connected with it, or the clearing house? A. None.

Q. Is there any way that you, as President of the Board, can tell what transactions at the pits are trades for actual delivery, and what are trades for ringing up and settlement by paying the difference in the market price?

A. No, sir. No one ever knows when a trade is made which it is for.

Q. Is there any record kept of transactions at the pits except that made at the time on the trading cards of the two members having the deal? A. No, sir.

Q. Does the Board of Trade deal in commodities at the pits? A. No, sir.

Q. Does it do anything except to furnish the place for those dealings, so far as the exchange room is concerned?

A. No sir, except to regulate their members by their rules.

Q. It has no business? A. No, sir.

1130 Q. It don't speculate in grain? A. No, sir.

Q. And don't buy futures? A. No, sir.

Q. Don't ring up deals? A. No, sir.

Q. It leaves its members to do all that? A. Yes, sir.

Q. Do you say there is a record made in the clearing house of the confirmation of these trades made at the pits?

A. No there is not.

Q. In gathering the market reports at the pits, are the changes in price of a commodity noted and sent over the country without reference to the kind of deal that is made there at the pit?

A. Every change in price is recorded so far as possible.

Q. Whether that deal is a scalping deal, a hedging deal, a deal in futures, or any other kind? A. Yes sir.

Q. Whenever there is a change in the market that is sent out? A. Yes sir.

Q. Where is it sent to and where has it been during this year?

A. Well, the Board of Trade delivers these quotations on the wires. I do not know where they go after that. They go to whoever subscribes for them through the telegraph company.

Q. The Cleveland Telegraph Company does not do that then?

A. They are transmitted simultaneously to the Cleveland Telegraph Company and Western Union Telegraph Company and Postal Telegraph Company.

Q. The Cleveland Telegraph Company gathers them?

A. Yes, sir.

Q. The Board of Trade don't send them out at all, do they?

A. My impression is that the operator at that instrument is employed by the Cleveland Telegraph Company.

1131 Q. And your impression is that the boys who gather the market reports are employed by the Cleveland Telegraph Company? A. Yes sir.

Q. And that the whole operation there on the floor is done by the Cleveland Telegraph Company? A. Yes sir.

Q. Now, don't you know that the Cleveland Telegraph Company delivers those reports to the Chicago & Milwaukee Telegraph Company? A. No, I don't know that.

Q. Do you know to whom the Cleveland Telegraph Company does deliver these reports?

A. I know they deliver them to the Western Union and the Postal.

Q. You know they do? A. Yes sir.

Q. Do you know that they deliver them to any other person, corporation, or institution? A. No, I do not.

Q. Then the Board of Trade have nothing to do with it has it, I mean the act of gathering the reports and sending them out, the Board of Trade has nothing to do with that?

A. It is done by the employes of the Cleveland Telegraph Company.

Q. Now that has been so ever since the first day of last August, hasn't it? A. First day of August, 1900.

Q. What? A. The first day of August, 1900.

Q. Yes, 1900 I mean, and that is the way it is done to-day?

A. Yes sir.

Q. And the Cleveland Telegraph Company pays the Board of Trade for the privilege of being in there and gathering those reports, don't it? A. Yes.

Q. Do you know it to be a fact that the Western Union Telegraph Company and the Postal Telegraph-Cable Company send those reports immediately and continuously after receipt all over the country? A. Yes sir.

Q. Have you any idea of the length of time that elapses between the sending of the report from the floor of the exchange room of the Board of Trade and the receipt of those re-
1132 ports at the other end of the wires at St. Louis, Minneapolis, Kansas City, San Francisco and New York?

A. I know it is very brief.

Q. Do you know that those reports, when received at those various cities, especially in the city of Chicago, in Cleveland, in Cincinnati, St. Louis and Kansas City, are immediately posted on blackboards in different offices of those cities?

A. I have been so informed.

Q. And you believe it to be true? A. Yes sir.

Mr. Robbins: That is objected to, and I move to strike that out, "I have been so informed and believe it to be true." That is not a statement of his knowledge.

The Master: It may stand.

Mr. Jenks: When was the mutual agreement entered into by which the Cleveland Telegraph Company employed the men that gathered the market reports?

A. I could not give you the date, some time in the summer of 1900.

Q. After the first day of August? A. I don't know.

Q. Was that agreement in writing? A. I don't know.

Q. Have you in mind the contract that you signed between the Board of Trade and the Cleveland Telegraph Company?

A. I know I signed a contract. I could not recall the details of it.

Q. Don't you know that the contract is not the one under which the Cleveland Telegraph Company gathers the market reports? A. I think that is the case.

Q. That it is not the one? A. Yes sir.

Q. Then is not the contract under which the Cleveland Telegraph Company gathers the reports a verbal one, between the Board of Trade and the Cleveland Telegraph Company?

A. I couldn't swear to that Mr. Jenks.

Q. Was not the present contract made after the one that was signed between the Board of Trade and the Cleveland Telegraph Company? A. I don't remember.

Q. It must have been after, because the writing that
1133 you speak about did not provide for the transaction of the business in the way it is done now, isn't that a fact?

A. I couldn't testify to that, Mr. Jenks.

Q. What makes you think it was done under some other contract than that written one?

[—] My impression is that at the time the contract was made with the Western Union and Postal Telegraph companies, there was another arrangement made in regard to the gathering of quotations but I should have to refresh my memory about that before I could testify about it.

Q. How can you refresh your memory?

A. I could look for a document or I could consult with others who were present when the arrangement was made.

Q. Who would you consult with?

A. With the market report committee.

Q. Would you consult with Mr. Robbins? A. I might.

Q. You think you could take what he says about it as being better than your own recollection about it?

A. Very likely, I have a very poor memory, Mr. Jenks.

Q. You don't know under what contract with the Board of Trade the Cleveland Telegraph Company is now gathering and sending out market reports, do you?

A. I could not testify to that at this moment.

Q. Whatever contract was made, was made after the first day of August, 1900, was it?

Mr. Robbins: That is repetition. He has asked him that three times.

The Master: Have you much more of this witness?

Mr. Jenks: Yes.

Whereupon, at 4:45 P. M. December 5th, 1901, an adjournment was taken until 10 A. M. the following day, December 6th, 1901.

1134

10:00 A. M. December 6th, 1901.

Parties met pursuant to adjournment.

Walter Comstock, a witness produced on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

Q. Mr. Comstock, will you state your full name?

A. Walter Comstock.

Q. Where do you live? A. Oak Park.

Q. In Cook County, Illinois? A. Yes sir.

Q. How long have you lived in Cook County, Illinois?

A. Eighteen years.

Q. What is your business? A. Commission merchant.

Q. For how long a time has that been your business?

A. You mean how long have I been a member of the firm or how long have I been in the business?

Q. A commission merchant in Chicago?

A. Two years, two years the first of January.
Q. Are you connected with any firm engaged in that business? A. Sir.
Q. Are you connected with any firm engaged in that business? A. Member of the firm of Schwartz, Dupee & Company.
Q. How long have you been a member of that firm?
A. It will be two years in January, two years the first of January.
Q. How long have you been connected with that firm?
A. Since 1891.
Q. What is the business of the firm of Schwartz, Dupee & Company, and what has it been for the past ten years?
A. Been commission merchant.
Q. In the City of Chicago? A. Yes, sir.
Q. Are you a member of the Board of Trade of the City of Chicago? A. Yes, sir.
Q. How long have you been?
A. Since January, 1900—well, I went into the firm, it will be two years in January.
1135 Q. Are the members of Schwartz, Dupee & Company members of the Board of Trade of the City of Chicago?
A. Every one.
Q. How long have they been—I will change that. Have they been such ever since you have been with them?
A. Certainly. You can not be a member of the Board of Trade—or do business on the Board of Trade without being a member, as a commission house.
Q. In what capacity were you with Schwartz, Dupee & Company before you were a member of that firm?
A. Well, in most every capacity.
Q. Does that firm have, and has it had since you have been there, settling clerks? A. Certainly.
Q. Ring clerks?
A. Well, they are about one and the same thing.
Q. Do they have books called ring books or settlement books? A. Yes.
Q. Do they have what they call an option book?
A. Yes sir.
Q. Do they have a customers' option ledger? A. Yes, sir.
Q. In doing a commission business on the Chicago Board of Trade has the dealings of that firm, generally, been dealings in options or futures? A. Do you mean by that future delivery?
Q. Yes. A. Yes, sir, principally.
Q. What proportion of their dealings for customers on the Chicago Board of Trade have been for future delivery, and what proportion for cash and immediate delivery?
A. That would be a pretty hard question to answer without looking it up.

Q. Make the best estimate you can?

A. Oh, well, I don't know what to say on that, Mr. Jenks. Every delivery day there are a great many transactions in cash, in the active months. I couldn't say what proportion; a great many.

Q. You probably don't understand the question. At the inception of a deal for future delivery, I want to know what proportion of their commission done on the Chicago Board of Trade consists of making contracts for future delivery, and what proportion consists in making contracts for immediate delivery and payment?

A. Well, we are not a shipping and receiving house, so the proportion would not be very large. I would not want
1136 to say what proportion it was. I would not want to commit myself.

Q. Would the proportion of purchases for immediate delivery and payment amount to one-tenth of one per cent of the whole business that you do for customers in dealing on the Board in futures? A. Well I couldn't answer that.

Q. Haven't you some idea? You say it is a small proportion. Can not you give us some idea as to the proportion.

A. Well, I don't see how I can until you allow me to look it up. Then I can give you a proportion, if you will allow me to do that, or want me to.

Q. Yes.

A. The total of that business is very great. I have a good deal of that to attend to.

Q. About how extensive have the dealings of your firm in futures been on the Chicago Board of Trade per day?

A. Do you want a general average?

Q. Yes. A. For how long?

Q. Oh, take it for a month, year or ten years, as long as you can.

A. Well, say for the last year, from two to three million bushels a day.

Q. And usually what kind of grain was dealt in?

A. Wheat, corn and oats.

Q. Which was the most, wheat, corn or oats?

A. Well, I should say wheat.

Q. How much would the dealings of wheat of that firm average per day? A. In wheat alone?

Q. Yes, on the Chicago Board of Trade?

A. I should say a little more than half of the total amount.

Q. Then it would average as much as a million bushels per day? A. I should think so.

Q. Covering what period of time would that average exist?

A. I said in the last year, for the past year.

Q. How was it previous to that?

A. Well, possibly a little more.

Q. For how long a time? A. A year.

1137 Q. And the year before that how was it?

A. Possibly a little more still.

Q. And before that?

A. I think the year before that was a very good year in grain.

Q. And what would it generally average by that year—that would be 1897?

A. Well, if I recollect rightly, 1897 was a very good year, and the average would be 500 to 750 thousand bushels more.

Q. More than a million?

A. No, more than the average of two or three million that I named in the first place.

Q. Well, I am speaking of wheat.

A. Well, it would probably average half a million more, Mr. Jenks, that year than it has for the past year.

Q. Half a million per day? A. Yes, sir.

Q. That would be about a million and a half per day, wouldn't it?

A. Yes, I think it would have been that in 1897, if I recollect rightly.

Q. In wheat? A. Yes, sir.

Q. About how much per day would the average be in corn?

A. I don't know. I can't go back so far.

Q. Give us some idea as to the extent. That is all that I am after. A. Well, say from 800 thousand to a million.

Q. In corn, per day, covering what period of time?

A. The time you mentioned.

Q. Take the first year. Do you know how much the average dealings in option wheat, or wheat for future delivery have been this year, 1901? A. In wheat?

Q. Yes. A. Just in wheat?

Q. Yes.

A. I don't think that the wheat market has been as active; there has been more trading in corn this year. I don't believe there will be hardly a million bushels of wheat this year, so far this year.

Q. Do you think it would be near that?

A. Between 750 and a million I should think.

1138 Q. Per day? A. Yes, sir.

Q. How extensive were and have been the dealings in corn for the present year?

A. Well, they have been averaged more than wheat. I couldn't just exactly say what they would be.

Q. And the dealings in oats?

A. Almost as much as the wheat.

Q. Does that firm deal in provisions on commission?
A. Yes, sir.
Q. About how extensive have their dealings been this year in provisions?
A. Well, I don't pay much attention to provisions, and I don't like to say. At times there is quite active trade in them, and at other times it is practically nil.
Q. For how long a time did you deal in grain for delivery the present month of December?
A. I don't understand the question.

(Question read.)

A. I don't remember the date that we commenced to trade in it.
Q. About when? A. Well, I should say in September.
Q. Of this year? A. Yes, sir.
Q. Can you give us an estimate of about the amount of wheat that you dealt in for December delivery?
A. No, I cannot.
Q. Cannot you make some sort of an estimate?
A. I don't know how much, Mr. Jenks, was for December and how much was for September and October. I just take the totals, that is all I have in my mind, is the total.
Q. Yes, or corn? A. No, I cannot do that.
Q. Can you tell when you commenced to deal in December corn? A. No, I don't remember that.
Q. Or oats? A. No, sir.
Q. But as a matter of fact, you did deal in those grains at the rate of about so much per day, as you have stated?
A. Why, yes, that is what I said.
Q. And your average per day for wheat would be somewhere from 750 to a million bushels, and corn would be a little more, and oats—how would they be?
A. A little less than wheat I said.
Q. A little less than wheat?
A. Yes, the trade in oats has been quite active lately.
1139 Q. When is the delivery day as practiced on the Chicago Board of Trade for the December option?
A. You are at liberty to deliver wheat sold for December at any time between the first day of December and the first day of January.
Q. As a rule are those deliveries made on the first day that they can be? A. Some are and some are not.
Q. Is it an object that the seller seeks to carry out, to deliver on the first day that he can wheat that he has got to deliver to save carrying charges, and a good many other things?
A. Well, it depends on the difference in the market price of the cash wheat and the delivery of the future.

Q. As a rule, on the Board of Trade, on which day of the delivery month are the deliveries the largest?

A. I should say that they were largest on the first day

Q. And the first day for delivery this year happened to be the second day of December, because the first was Sunday?

A. I believe it was, yes, sir.

Q. How much corn was delivered to Schwartz, Dupee & Company on the second day of this month for which they gave their check in payment?

A. Supposing I can't remember? I don't exactly remember.

Q. Well, can you give us pretty near? Give us your best judgment on that.

A. I think there was 75 thousand bushels of grain. Now, I don't want to say positively, there might have been more, there might have been a little less, but that is my idea of it.

Q. That is grain of all kinds? A. Yes, sir.

Q. How much of that did they deliver to—

A. No, there was more than that, Mr. Jenks, as I come to think of it, there was more than that.

Q. How much? A. I believe there was over a hundred.

Q. Over a hundred thousand bushels? A. Yes sir.

Q. Now, that is all kinds of grain?

A. Yes, I think there were some of all kinds in that.

1140 Q. That was delivered on contracts for December option? A. Yes sir.

Q. And that was all delivered on contracts that had been executed on commission? A. Yes, sir.

Q. How much of that grain was delivered by Schwartz, Dupee & Company to your outside customers.

A. Do you mean how much belonged to our customers?

Q. No sir, how much was delivered, actually delivered and paid for by the outside customers?

A. Well, the firm of Schwartz, Dupee & Company paid for that grain, if the customers were hedging it, for the account of the customer.

Q. If you want that first, did Schwartz, Dupee & Company actually pay? A. Certainly.

Q. For a hundred thousand bushels of grain delivered this month? A. Yes, they paid.

Q. Those deliveries that you speak of were not made on notices, they are actual deliveries that I am talking about.

A. That is what I am talking about, too.

Q. And that hundred thousand bushels was delivered and paid for? A. And paid for.

Q. How much of that that was delivered to Schwartz, Dupee & Company was actually delivered out to their customers for

whom they had executed the orders, and paid for by the customers?

A. Whether the customers that it was delivered for had money enough to pay for it—there is one of them certainly had money with us enough a good many times to pay for his grain.

Q. Mr. Comstock, just confine yourself to answering the question. A. I am afraid you misunderstand the answer.

(Question read.)

A. The customers were notified that we had paid for the grain and held it for their account. I don't remember that we actually delivered the receipt to any one of them, but I took them over and put them into the vault for their account. Some of them had money enough to pay for all of it.

1141 Q. Do you hold them now, or have you delivered them out again on the Board of Trade?

A. Since that time we have sold some of them and delivered it out.

Q. You have got some of it yet? A. Yes sir.

Q. As a rule, in the past ten years, can you give us an estimate of the amount of actual deliveries, where you actually received the warehouse receipt, and payment for them, compared with the amount that you had involved in the trade?

A. No, I could not.

Q. How are those trades settled on the Board of Trade? In any other way than by actual delivery of the commodity?

A. Well, there is really an actual delivery at the end of each month.

Q. But I did not ask you that.

A. Where the person that has wheat coming to him delivers it to the next man that he has it sold to?

Q. No. He delivers the notice, don't he?

A. Well, you couldn't very well carry the wheat around with you.

Q. He just delivers the notice?

A. He delivers the notice.

Q. That is not what I asked you. This is what I asked you: How are contracts for the future delivery of stuff closed out, in any other way on the Board than by the actual delivery of the stuff? A. Well, it is a long story.

Q. Why, they are closed out by rings and setoffs aren't they?

A. You couldn't call them rings and set offs, Mr. Jenks, I don't think.

Q. What do you call them?

A. If I have wheat sold to you I make out my notice of the value of that wheat and the price it is sold to you at and deliver it to you.

Q. Yes.
A. That notice; then you have it sold to some one else, you make the same notice to him.
Q. Yes? A. Then it lands with some one else.
Q. Yes?
A. And finally gets back to us and we deliver the wheat.
Q. Yes? A. The receipts for the wheat.
1142 Q. Now, that is never done until the delivery month comes, is it?
A. It couldn't be done except in the case of the option maturing; that is cash wheat. You have got to wait until the option matures.
Q. That is cash wheat? A. That is cash wheat.
Q. Now, how do you settle contracts which you make before the delivery month arrives? Do you do that by rings and set offs? A. Rings and settlements.
Q. And that is done by your settlement clerks ascertaining that a ring exists or that a direct settlement may be made, that is what it does in the first place?
A. Well, you don't have to ascertain anything on direct settlement. You know when you have got a direct settlement with any one.
Q. Very well. If you have got a commodity bought from and sold to the same man at a different price, how do you settle that up? A. That is a direct settlement.
Q. How do you do it,—how do you settle it?
A. It is settled through the clearing house.
Q. That is, you pay or he pays the difference in the two prices, the one of sale and the other of purchase? What is your answer? A. Yes.
Q. Now, supposing that there is a ring; how is that settled?
A. That is settled between the parties in the ring paying differences or collecting differences.
Q. You don't mean exactly that; you mean that when you ascertain there is a ring you make out your clearing house sheet and put down on that sheet what you claim from one of the parties in the ring and what you owe to another party in the ring, that is what you put down? A. Yes.
Q. And you send that sheet in to the clearing house, and you send your check with the sheet if you owe anything, and after the clearing house gets the sheet you get a check from the clearing house to you if anything is due to you? A. Yes sir.
Q. Now, those checks are the differences between the
1143 purchase price and the sale price always, are they not?
A. Yes, sir.
Q. Then in making out a statement of the account for your customer, suppose he has ordered a purchase of wheat of you

for May delivery, and to-morrow he orders you to sell that out, you execute both orders don't you, on the floor of the Board, don't you? A. Certainly.

Q. And after you have made the sale which is on account of the purchase, the same commodity and quantity, you then make out for your customer an account of purchase and sale and send it to him, don't you? A. Yes, sir.

Q. And you show on that account of purchase and sale the difference between the purchase price and the sale price and it is carried out as a loss or profit to him of so much, isn't it?

A. We make out the purchase and sales in this manner: 10 thousand bushels wheat say, at 79 cents, $7900. 10 thousand bushels sold at 78 cents, $7800. Profit, or loss, $100, less commission and tax so much.

Q. That is the way you make out the bill?

A. That is the way I make out the account of purchase and sales, yes, sir.

Q. How long have you been making out the account of purchase and sale, arrying out the total?

A. Ever since I have been in the business, I mean ever since I have been around the Board of Trade.

Q. And the commission is how much that you charge to a customer? A. One-eight of a cent a bushel.

Q. And if you don't know him to be good, do you require him to put up a margin?

A. We generally require him to put up a margin, whether we know him to be good or not.

Q. In other words, he has to put up some money with you before you will make deals with him? A. Yes, sir.

Q. And he has to put up money enough to keep you insured against loss by fluctuation in the market price of the commodity, does he not? A. Yes, sir.

1114 Q. Then, if he wants to close his account with you, and he has made a loss in the transaction, how is that account closed? I am speaking of absolutely closing his account with you.

A. Well, I don't understand just exactly what you mean, Mr. Jenks.

Q. Well, you do it in this way, do you not?—if he has made a loss in his trades with you, you have in your hands, which he has put up as margins, money enough to secure you against that loss. Now, if he wants to close his transactions with you, you deduct the loss, the commission and the Government tax from the amount margins that he has put in your hands, and you send him a check for the balance, do you not? A. Yes.

Q. And that ends the transaction between you and the customer?

A. Yes, that will end it. He should be liable for the loss if the transaction that he made did not settle with the firm that it was made with on the Board of Trade, but we haven't always exactly that proposition. That would generally be the way of doing it, yes.

Q. Now, in making out a statement, if he wants to close his account, suppose he has made a profit in the transaction, that profit would arise as the difference between the purchase and sale price of the commodity; that would be carried out as a profit, so much. Then, in closing your account with him you would deduct from that profit the amount of the commission and government tax, and you would add to that the money that he had in your hands, and then you would send him a check for the two together, wouldn't you? A. Yes, sir.

Q. And that would close the matter. Now, is that the rule of closing up matters with your customers?

A. That is our rule, if they want the account closed.

Q. Now, you take the same transaction between you and a member of the Board of Trade. You get an order from him, the customer, say, to buy ten thousand bushels of May wheat to-day. A. Yes.

1145 Q. You go on the floor and you execute that order with Adams, you make the purchase from Adams of May wheat. To-morrow you find that you have made a sale to Adams for some other customer of 10 thousand bushels of May wheat at the same price. How do you close that transaction between you and Adams?

A. That would be a direct settlement.

Q. How would you do it? How would you end it?

A. How would I end up that transaction with Adams?

Q. Yes, with Adams.

A. Part of which had been made for your account, one side of which had been made for your account—that was your proposition, was it?

Q. Yes. How would you close it with Adams, as between you and Adams, you find you have got a direct settlement with Adams for to-morrow?

A. I would send him a check slip for the difference.

Q. You would send that directly to Adams?

A. To the Clearing-house.

Q. To the clearing house? A. Yes.

Q. You would put that transaction on your clearing house sheet?

A. I wouldn't put the transaction, I would put the result of it on the clearing house sheet, wouldn't include the whole transaction.

Q. Now, whether you would send a check with it would depend on whether you had lost money in the transaction with

Adams; if you had sold to Adams for more than you agreed to pay him when you bought it, he would have to make out his clearing house sheet and put in a check for you, wouldn't he?

A. Well, you know there is only one check to one clearing house sheet, it is the grand total we send the check for.

Q. Yes. I am speaking of only one transaction, and assuming you didn't have more than one transaction.

A. There never was a day we did not have more than one. You mean the general proposition?

Q. Yes, you just answer the question with reference to the case that I put. You had one transaction with Adams where you bought from him, and another transaction with him
1146 where you have sold to him the same commodity for the same delivery, but there is a difference in the price, now that transaction, when you know that you have done that, the next morning you put it on the clearing house sheet? A. Yes.

Q. And you either put in a claim from Adams to you—

A. Or an I. O. U. to Adams.

Q. Or else you put in, "We owe Adams so much."

A. That is right.

Q. And if you put it in that you owed him, you would put in a check for that amount and send the sheet and check to the clearing house, would you not?

A. We would put in a check for the result in the difference in balances on the clearing house sheet. We would not put in a check for Adams alone, they don't make out individual checks.

Q. In the case I gave?

A. If we had only one transaction that day?

Q. Yes, that is what you would do?

A. Yes. I did not understand your question.

Q. Now, the check that you would put in would be just the difference between the purchase price and the sale price, would it not? A. Yes.

Q. And that check that you put in, would be payable to the manager of the clearing house? A. It would.

Q. Samuel Powell? A. Yes, sir.

Q. Now, if you did not put in a check, but if you claimed from Adams some money, Adams would put it on his clearing house sheet just the same, only he would say on his sheet, "I owe to Schwartz, Dupee & Company?" A. Yes, sir.

Q. And he would send his check for that amount, and it would be payable to Samuel Powell, the manager of the clearing house. Now you get your money by check signed by Samuel Powell, the manager, wouldn't you?

A. Yes, I think that is the way they are signed.

1147 Q. Now, in the case I put, suppose you had bought from Mr. Adams 10 thousand bushels of May wheat, and

you had the next day sold to Adams 10 thousand bushels of May wheat for another customer, would the fact that you had not closed out either of those trades for the two customers interfere with your settling that trade between you and Adams in the way you have described, through the clearing house?

A. Interfere with the settlement, making direct settlement?

Q. You would make the direct settlement, without reference to your customers, wouldn't you?

A. Yes, for the reason that when they closed out their trade, we would have to make other settlements in order to close up the transaction.

Q. I did not ask you for the reason; I asked you for the fact.

A. I don't understand.

Q. Whether the contracts for your customers remained open or not, you would make the settlement with Adams just the same whenever you could through the clearing house, wouldn't you? A. Yes.

Q. Now, we will suppose that you made the same purchase for me, on my order, from Adams of 10 thousand bushels of May wheat that stood there, and the next day I give you an order to close out my trade and sell 10 thousand bushels of May wheat at the market price, would you execute that order?

A. If you told me to sell out the wheat that you bought the day before?

Q. Yes. A. I don't see any reason why I wouldn't.

Q. Well, you would, wouldn't you? A. Why certainly.

Q. Then you would make out an account of purchase and sale to me, just the same as you have described? A. Yes.

Q. I would be out of that deal, then wouldn't I?

A. You would with us, because we are generally guarantee in the transactions with our customer. I don't know what other houses would do.

1148 Q. I am the customer.

A. We guarantee our transactions to the customer, other houses might not do it, but we do.

Q. I am the customer. I want to know whether I will be out of that deal or not. A. You would with us.

Q. That purchase that you have made from Adams remains open at the time you closed me out in the way we have described. Now, as a rule in a great majority of the cases, how, as a matter of fact, would that purchase from Adams be closed out as between you and him before delivery day?

A. Well, it could be closed out by a direct settlement, with the customer that had the transaction on the other side.

Q. That is not the question. How would it be closed out in the ordinary course of business?

A. I went over all that I thought, a few minutes ago.

Q. I know it. Would that be closed out the same way as a rule? A. Why, yes. I don't see—

Q. Either by a direct settlement with him, because you would sell him something? A. Yes.

Q. For the same delivery? A. Yes.

Q. Or by a ring, and closed out that way? Now, is that the way that the trades on the Board in futures are usually closed out?

Mr. Robbins: I object to that, unless they confine it to this witness' business.

Mr. Jenks: Well, as to the business of Schwartz, Dupee & Company. Is that the way it is usually closed out?

A. Before the delivery day comes around, do you mean?

Q. Yes. A. Yes, sir, that is the—

Q. It is pretty early now to deal in the May, next May options? A. Well I don't know that it is.

Q. Well, they are dealing in it, and next May is quite a piece off, isn't it? A. I don't see that they—

Q. Now, what I want to ask is, whether the most of the trades that you make on the Board as between your house and the other member of the Board with which you make the
1149 trades for next May options, are not either rung out or closed out by direct settlement before next May arrives?

A. What proportion did you say?

Q. No, I asked if the greater portion of them are not closed out in that way before the month of May comes?

A. Well, I should say they were, yes.

Q. Now, would you say that 99 per cent of them are closed out before the month of May arrives?

A. No, sir, I would not.

Q. How much would you say?

A. I don't know what they are going to do with it the first of May, Mr. Jenks.

Q. I didn't ask you that, what they are going to do.

A. Then I can not tell until the first of May arrives.

Q. Of course you cannot; but you have got 20 years' experience to judge from, haven't you?

A. No, not quite; fifteen I said. No, I cannot tell the proportion, Mr. Jenks. I don't know how much business we would do up to the first of May.

Q. It don't make any difference how much you do. I am asking you as to a proportion. What proportion is closed out before the delivery month arrives, or what proportion of the contracts remain open on the first day of the delivery month?

A. Well, I cannot answer that, Mr. Jenks, without looking it up. It is impossible for me to do that. I would like to if I

could, but I don't want to estimate something I have not thought about at all.

Q. What proportion of your customers, in number, deal on the Board of Trade through your house in futures for the purpose of having the commodity dealt in actually delivered to them?

A. Well, I cannot answer that. The contract is that if they hold—

Q. I didn't ask you that.

A. I don't understand the question then.

Q. Well, what proportion of customers which your house has that deal in commodities on the Board of Trade for future delivery make those deals for the purpose of having that stuff delivered, and what proportion of them usually close out their deals without any delivery before the delivery month comes?

A. Well, I couldn't answer as to the proportion at
1150 all; I have said that. I cannot do that without looking it up. The understanding is when a customer buys anything—

Q. I didn't ask you that.

A. Well, I will stop then; but the proportions, Mr. Jenks, it is awful hard—

Q. Now, without reference to what the understanding is at the time, how are the trades as a rule closed up, are they by delivery and payment for the stuff, or are they settled up by rings or by countersales without any delivery?

A. Well, the majority of them undoubtedly with our house are settled up before the delivery day comes around, the majority.

Q. And a very large majority?

A. Well, it is a majority anyhow.

Q. How? A. It is a majority anyhow.

Q. Isn't it 99 per cent of them, so far as your customers are concerned?

A. No, I wouldn't say it was 99 per cent; that is pretty close.

Q. Well, is it 95 per cent?

A. I said I couldn't figure out the proportion.

Q. Is it 90 per cent?

A. I have told you that before. I don't want to make an estimate about what it is.

Q. What?

A. I don't want to make any estimate of about. I have got to look those things up. I couldn't—

Q. Did you have any contract with your customers for December commodities this month?

A. Yes, sir, I have just told you about that.

Q. That remained open to the first day of the month?

A. Yes, sir, we wouldn't have had a hundred thousand bushels delivered to us and paid for, as I told you about a little while ago, if we did not have any open.

Q. Now, you had delivered to you one hundred thousand bushels of December grain. A. Is that a question?

Q. You know as a matter of fact that you did have delivered to your house, and that those deliveries were made on contracts that you had made for customers? A. Yes, sir.

1151 Q. That is a fact? A. Yes, sir.

Q. How much grain was delivered to you on the first day of the month by any customer that you had?

A. We are not in that branch of the business, of receiving grain from customers.

Q. You did not receive any grain from a customer?

A. Hardly; they are not shippers or receivers. We are not in that branch of the business at all.

Q. Your customers did not deliver to you any grain for the December delivery? A. Our customers?

Q. Yes.

A. None except that that we paid for for them, they delivered it back to us, or we hold it for their account; if you call that delivery—I don't understand the question exactly.

Q. I understand that. A. I know you know all about it.

Q. You took in grain from some other member of the Board, that is what you did.

A. No, he might not have been a member of the board.

Q. Well, you didn't take it in from a customer of your house, did you? A. Not that I remember of.

Q. Now, you didn't deliver any grain during this month to any customer of your house, did you?

A. No, we are holding the receipts for their account.

Q. And you probably dealt in how much grain for December delivery?

A. Oh, I don't know, Mr. Jenks, how much there was for December delivery.

Q. Well, commencing with the month of September, if you dealt in two or three million bushels per day for December delivery, you had a pretty good lot of grain?

A. I did not say that we dealt in that much for December delivery. All kinds of grain for every different—

Q. How much did you deal in for December delivery?

A. I don't know, Mr. Jenks.

Q. Give us an estimate of the amount. A. I cannot.

Q. Since the first of September, have you dealt in any
1152 other option than December for wheat?

A. Yes, I think so.

Q. What month?

A. I don't remember. It might have been October, November,—

Q. Did you? A. I think so, but I don't know.

Q. But you don't know what option, what month?

A. Possibly both.

Q. What are the usual option months?

A. You mean—the most active?

Q. For wheat, yes, July?

A. September, December, May and July I should say were the most active options.

Q. Now, the most active in that lot are May and December, are they not?

A. No; July is just as active; September is just as active.

Q. Well, which is the most active?

A. Well, I cannot say. One year it might be one, and one year another.

Q. Very well.

A. That depends on the crop situation, I think.

Q. Since you have been in business, and your house has been in business, take it for the past fifteen years, and since your customers have been scattered around, and operating through you on the Board of Trade, did you ever deliver anything to a customer, actually deliver it to him and he pay for it to you?

A. Thousands of times.

Q. Did you actually receive from your customer the actual commodity dealt in and give your customer a check in payment for it? A. A great many times.

Q. Now, what customers were those?

A. Well, I don't know that—do I have to answer that question? A. Do I have to give my customers' business away?

Q. You needn't give the business away, I just want to know who delivered you stuff?

Mr. Robbins: Do you mean what class?

A. I don't like to give the name of my client away.

Mr. Jenks: Well, let's see if I can find out what his business was. A. How do you mean?

Q. Was he a warehouseman?

A. Well, there are more than one.

Q. What?

A. We had more than one that we delivered wheat out to. That other time we took it and paid for it.

1153 Q. Those that actually took the wheat, were they mills, warehousemen, shippers, or what were they?

A. All kinds of customers.

Q. All kinds, farmers, dry goods merchants—

A. I wouldn't say that they were farmers or dry goods merchants, but all classes of customers I would say, as a general proposition.

Q. Have you lots of customers who are dry goods merchants, have you not? A. We have some.

Q. Now, do you know of your ever delivering to a dry goods merchant any wheat or receiving any from him?

Mr. Robbins: Wait a minute. I think I want to object. It is immaterial.

The Master: I think it is competent to show the class of men he delivers to. Simply the class and not the individuals. He may answer.

Q. Do I answer?

Mr. Jenks: Yes.

A. Well, I cannot remember about whether we have ever delivered to a dry goods merchant, or not.

Q. Have you ever delivered to anybody except the warehousemen or a shipper? A. Certainly, yes.

Q. Have you in mind any person?

A. Oh, yes, I could name a few, but I don't like to unless I have to.

Q. Well, can you name a few that you have delivered stuff to this year?

Mr. Robbins: I object to that.

The Master: You need not give their names. You can give the class of business.

Mr. Jenks: No, he can answer this question; you can answer it by saying Yes, if that is the fact, or No if that is not the fact.

A. Oh, I can answer it that way. Well, that is all right. Yes.

Q. Now, how many of them are there that you have delivered stuff to this year?

A. Oh, there are quite a number. I wouldn't say how many.

Q. Well, how many that you can remember?

A. Well, then I would have to have time to remember them. I cannot go back over the whole year and pick that out
1154 in a minute.

Q. But I mean a general estimate.

A. I cannot give you a general estimate, Mr. Jenks.

Q. With those that you have in mind, where you did deliver to them, what was their business?

A. Well, some were in the commission business.

Q. Members of the Board of Trade?

A. Yes, whom we were doing business for. They did not clear their own trades, understand. Some have no other business than speculating; some were capitalists, some that you know. I don't care to say who they are.

Q. I presume so. I presume there are a lot of them that I know. A. Yes, sir.

Q. Now, I am not speaking of members of the Board of Trade that you did business for. I am speaking of outside customers, people who are not members of the Board.

A. Yes, I can remember some of those, too.

Q. Now, I am also speaking in the general class of your customers, outside of the members of the Board, the general class of the customers; have any considerable number of that general class within the past ten years, delivered to you anything? A. Oh, at times, Mr. Jenks, they have, yes.

Q. But was it a very small proportion of the number that you had as customers?

A. Well, yes, it was a small proportion, because a customer could not buy the wheat from any one except a commission merchant.

Q. I don't care for the reason at all.

A. How is he going to get it if he don't buy from a commission merchant?

Q. He ain't going to have it, is he?

A. He cannot get it any other way.

Q. Then if he don't buy it on the Board of Trade, he can't get it at all?

A. He could buy it in the country and ship it in. He might not buy it from the commission man.

1155 Q. The only grain that you deliver here, in wheat, is number two, or a better grade, isn't it?

A. That is the contract grade.

Q. Now, what proportion of the customers that you had who dealt in grain for December delivery had their contracts open the first day of December?

A. I don't know. Some of them may have them open yet.

Q. What proportion of them? A. I don't know, Mr. Jenks.

Q. Have you any idea how many customers you had, dealing in the December option? A. When? On what day?

Q. Any time in this month's options?

A. Oh, no; it changes every day.

Q. I know it does; but I want an idea of about how many customers you had?

A. At one time most of the trade was in December.

Q. Well, how many customers? A. Well, I don't know.

Q. You can give us an estimate?

A. Well, say fifty, say sixty, say any number you want.

Q. No, I want you to say about what you think you had.

Mr. Robbins: I object to that. The witness cannot be thinking. If he cannot answer, he cannot answer.

A. I cannot decide these things off hand. It is a pretty big business over there.

Mr. Jenks: I know it is a big business. Perhaps I can make a better guess as to the number of customers than you can.

A. When I say anything I like to say what I think is about right, and I have got to think it over before I can answer.

Q. You have a very large number of customers, haven't you?

A. Yes, you can call it fifty, say fifty.

Q. I want to get it near what it as. It is much larger, isn't it?

A. That is as near as I can remember, without thinking it over.

Q. Isn't it much larger than that?

A. I have given you my idea of it, Mr. Jenks; unless you want me to think it over, I cannot say anything different from fifty.

Q. I mean counting all the customers[than]you have
1156 had that dealt in the December option, and that dealt in that option previous to the month of December. Now, from back the first of September, start there.

A. That is harder to answer than the other question was.

Q. It is the same question, only it is what I want to get in your mind.

A. Well, I would say there were a great many more than fifty.

Q. Well, weren't there more than three hundred?

A. No, I don't believe so; we haven't that many grain accounts open on the books, Mr. Jenks.

Q. Well, about how many have you? A. Less than that.

Q. Have you two hundred?

A. Possibly we have, in everything.

Q. Now, are you speaking of accounts that are open, or do you include in that the customers where you have closed their accounts? A. Well, all of them, say.

Q. All of them? A. Yes.

Q. Would about 200 be a fair estimate?

A. I think we have about that number of accounts, yes.

Q. And 200 would be a fair estimate of the number of customers on an average for the past ten years, would it, of outsiders?

A. No, I don't believe so; I don't believe there would be that much on an average.

Q. About how many on an average for ten years?

A. Well, less than that.

Q. 150? A. Well, I don't believe there would be 150.

Q. Well, an average of a hundred anyway, wouldn't there?

A. I think so, yes.

Q. Now, Mr. Comstock, how many of your customers who had trades in December options had those trades open and not closed on the first day of December?

A. Well, I should think that about half of them.
Q. You should think half of them? A. Yes, sir.
Q. What had become of the other half of the contracts?
A. They had closed their transaction previous to that date.
Q. How?
A. By either selling the wheat that they had purchased or buying in what they had sold.
1157 Q. And settling on the differences?
A. We still may owe them money or they may owe us, but the statements have been rendered.
Q. Now, with different members of the Board of Trade, how many contracts would you say you made for the December option? A. I haven't any idea, Mr. Jenks.
Q. Can you give us an estimate as to whether you had a large number or a very large number?
A. Not a very large number, because the business has not been very active lately.
Q. How?
A. The business has not been very active lately, the markets have not. The amount of business all depends on that, so I cannot say about that.
Q. What proportion of them remained open until the first day of December?

Mr. Robbins: He has asked that about three times.
Mr. Jenks: That is the first time that I have asked him.
Mr. Robbins: No, just about three times.

A. I cannot say about that, Mr. Jenks, because I would have to stop and figure all that had been done since September first; honestly, I cannot tell you that.
Mr. Jenks: Where you delivered out anything that you received since the first day of this month, who have you delivered it to? A. To the people we sold it to.
Q. Members of the Board of Trdae? A. Yes, sir.
Q. In every instance? A. I think so.
Q. How many people have you delivered to since the first of this month? A. How many?
Q. Yes.
A. Well, I should say fifteen or twenty, but that is only a guess, but I should think there would be that many.
Q. Don't you think there are more? A. Possibly.
Q. Mr. Comstock, I wish you would try to remember and give us your best judgment on this. Now, you received but about one hundred thousand bushels all told? A. Yes.
Q. You did not receive anything in less than five thousand bushel lots? A. No, sir.
1158 Q. And you did not deliver anything in less than five thousand bushel lots? A. No, sir.

Q. Now, do you think that you delivered to 20 different people in order to deliver 100 thousand bushels?

A. I said fifteen or twenty, and I said I thought about a hundred thousand; it may have been more.

Q. And there may have been a good deal less?

A. No, sir, not much less.

Q. Some less?

A. Well, five or ten. I didn't come up here with a lot of figures, Mr. Jenks. You know I cannot tell about these things.

Q. Now, as a rule, where you make the deliveries to the different members of the Board, you deliver more than five thousand bushels in a lot, don't you?

A. Not if they don't buy but five thousand.

(Question read.)

A. Five thousand bushels is the contract—that is the smallest contract, yes, sir.

Q. I know that; but as a rule?

A. Of course, if you have more going to him than five you deliver more than five.

Q. And as a rule you deliver more than five, don't you? To a member of the Board?

A. I don't know why you could call it a rule; I don't see why you call it that.

Q. Because you generally have transactions in more than five thousand bushel lots with members of the Board?

A. Well, I deliver a great many 5 thousand bushel lots, yes, in 5 thousand bushel contracts.

Q. Do you actually pass over the warehouse receipts?

A. Certainly, you cannot make a delivery without it.

Q. Or do you do it by notice? Did you do that?

A. Yes, sir.

Q. And not by notice?

A. No, we did that and got checks from other parties for the warehouse receipt.

1159 Robert S. Worthington, a witness produced on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

Q. Mr. Worthington, will you state your full name?

A. Robert S. Worthington.

Q. Are you connected with the Chicago Board of Trade?

A. Yes, sir.

Q. In what capacity? A. As assistant Secretary.

Q. As Assistant Secretary, did you make out the statement that appears on Roman numeral page sixty-three of the book which is marked on the back, "Chicago Board of Trade, 1900," and on the title page is, "The 43rd Annual Report of the Trade

and Commerce of Chicago, for the year ending December 31, 1900, compiled for the Board of Trade by George S. Stone, Secretary?" A. Yes, sir.

Q. You will see an item there, "From sales' clerks' tickets $1500, less salary of manager of settling clerks, $900." Will you state what settling clerks are there referred to.

A. They are the clerks that represent the different houses upon the Board of Trade and who settle their differences.

Q. Where? A. Where?

Q. Yes.

A. Within the building, usually, in the corridors of the building part of the time, and sometimes in an office set apart for them.

Q. Who is the manager of those settling clerks?

A. The manager of late has been a man by the name of Rowan, an officer in charge of the boys.

Q. An officer of what?

A. Well, he is called an officer. He is a salaried man appointed by one of the committees of the Board for the purpose of taking charge of those clerks and preserving order.

Q. Who employed that manager?

A. The Board of Trade of Chicago.

Q. Of the city of Chicago? A. Yes, sir.

Q. And he has charge of those settling clerks in the exchange room of the Board of Trade?

A. Not the exchange room, no sir. They have no admission there. It is outside.

1160 Q. They are not in there at all? A. No, sir.

Q. Now, do you know that of your own knowledge, that they are not in there, not in the exchange room?

A. Yes, sir.

Mr. Jenks: Mr. Robbins, you don't have to get so near the witness.

Mr. Robbins: If you object—I wanted to look over the items that you are asking about.

Mr. Jenks: Haven't you another book?

Mr. Robbins: No.

Mr. Jenks: You will find another item there under the head of "Receipts from Cleveland Telegraph Company, August first to December first, $2874.78." Do you know what that amount is composed of?

A. Composed of several payments made by the Cleveland Telegraph Company, showing their earnings.

Q. Showing its earnings? A. Earnings of the Company.

Q. The Cleveland Telegraph Company? A. Yes, sir.

Q. Did the Cleveland Telegraph Company pay that amount of money to the Board of Trade? A. Yes, sir.

Q. Was that for the privilege of gathering market reports on the floor of the exchange room? A. I presume it was.

Q. Further down, the second item from the bottom of that page, under the head of "Expenditures" you will find "Quotations Department, $814.51." What is that for?

A. The bulk of that, with the exception of a small amount of money paid out for stationery was paid to employes who prior to the time of the Cleveland Telegraph Company taking charge of the quotations, had been employed by the Board of Trade to gather quotations on salaries.

Q. And since the Cleveland Telegraph Company took charge of that business the Board of Trade has paid nothing for gathering market reports? A. Nothing for salaries, no, sir.

Q. Over on the other side of the same leaf, the second item from the top is "Expenses, account warehouse Committee, $128,505." What has the Board of Trade to do with the warehouse committee that results in such an expenditure of that for one year?

1161

A. That is a typographical error. The full amount was $1285.05. It is an error of the printer.

Q. Ain't that included in the footings here?

A. The footings will show $1285.05 as footed.

Q. Was the $1285.05 in payment for services? A. Yes, sir.

Q. Services of whom?

A. Well, there were sundry examinations made of the warehouses under the rules of the board, grain warehouses, for which the parties that made the examination were paid. Some other items went in to make up the account.

Q. What is included in the item, "Special Services, $18,554.18?"

A. That is mainly on account of what we call the secret service account.

Q. Does the Board of Trade run a secret service department?

A. Well, we have what is called on the books a secret service department, or special service, as it is here.

Q. Who are employed in the secret service?

A. I think that the—

Mr. Robbins: Wait a minute; I think I will object. How is that competent?

Mr. Jenks: I think that the next question will show you.

Mr. Robbins: Well, I will ask for a ruling.

The Master: Objection overruled to that particular question. Read the question.

(Question read.)

A. I think that Mr. John Hill is—most of the money is paid to Mr. John Hill, Junior.

Mr. Jenks: Q. Mr. John Hill is a man now present in this room, sitting by Mr. Robbins, is he not? A. Yes, sir.

Q. Whether he has been sitting by him during the taking of all the testimony, do you know?

A. I do not positively. I think, however he—

1162 Q. This is your first appearance here?

A. Yes, sir. I know nothing as to his presence before my presence here.

Q. What secret service is Mr. John Hill employed to perform?

A. Well, so far as I know it is in the warfare against bucket shops.

Q. What do you mean by a bucket shop?

Mr. Robbins: I object.

A. That is a hard matter for me to answer.

Mr. Robbins: Let us have a ruling on this.

The Master: Objection sustained.

Mr. Jenks: Mr. Worthington, how long have you been connected with the Board of Trade?

A. Well, 20 years in all, 1888—13 years as assistant secretary and six years prior to that as secretary of the Board of real estate managers.

Q. Were you ever, or are you now, a member of the Board of Trade? A. No, sir.

Q. What real estate has the Board of Trade?

A. The property upon which the building stands.

Q. How is that real estate described?

A. I am unable to give you, sir, the lots.

Q. Well, you give us as nearly as you can the location of the real estate and the size of it.

A. The frontage is 174 feet and 9 inches on Jackson Boulevard, and 240 feet on Pacific Avenue and Sherman Street, La Salle Street and Sherman Street.

Q. In the city of Chicago? A. Yes, sir.

Q. What is the value of that real estate without the building?

A. I should say in the neighborhood of—something over two millions of dollars.

Q. How long has it been of that value?

A. Well, possibly four, five or six years. It is property that is appreciating all the time in value.

Q. What was the cost of the building that stands on that ground?

A. About one million seven hundred and fifty thousand dollars, in round figures.

1163 Q. What do you say is the present value of the whole property, ground and building?

A. Well, it would be very hard for me to place a value upon the building. It depends entirely for what purpose it was to be used, whether it was to be torn down or used by some one else.

Q. Used as it is used?

A. Yes, sir, or for any other purpose.

Q. Well, take it used as it is used, what is the present value of the building and the ground?

A. Well, I should think in the neighborhood of from two millions and a half to three millions of dollars.

Q. Do you know when the Board of Trade first became the owners of the land.

A. In the year 1882 I think, sir, possibly the latter part of 1881.

Q. What was the cost of the land to the Board of Trade?

A. I am unable to tell you that.

Q. You know what amount the board paid out in cash, don't you?

A. No, sir, it was before my time, before I had charge of any of the financial matters of the Board.

Q. When was the building erected?

A. From 1882 to 1885.

Q. When did the Board of Trade commence to use that building as an exchange building?

A. In the year 1885, the month of April, I think.

Q. Do you know whether any encumbrance now exists upon that property? A. Yes sir.

Q. When was the encumbrance made?

A. The present encumbrance was made in the year 1897, I think.

Q. And the total amount of it is how much?

A. At present one million two hundred and forty thousand dollars.

Q. As assistant Secretary of the Board of Trade, do you keep any record of the quantity of commodities dealt in at the pits at any time? A. No, sir.

Q. Or any record of the amounts or the quantities so dealt in that are rung up or set off through the clearing house without any delivery? A. No, sir.

Q. Or of the amount of deliveries of any commodities dealt in on the floor of the exchange room? A. No, sir.

1164 Q. Or of the manner in which trades are settled and closed? A. No, sir.

Q. Or of the amount of trades settled through the clearing house? A. No, sir.

Q. Or the number of trades settled through the clearing house? A. No, sir.

Q. Does anybody keep such record?

A. The clearing house has its records, the Board of Trade clearing house, showing the amount of business transacted by it.

Q. I mean, does anybody keep records of the matters that I asked you about just now?

A. Not that I am aware of, except those referring to the clearing house.

Q. Well, does the clearing house keep a record of the number of transactions or trades and the quantities of commodities that are settled through the clearing house?

A. No, sir, they don't.

Q. Have you anything to do as secretary or assistant secretary of the Board of Trade, with the Board of Trade clearing house?

A. Nothing more than to receive the statements sent in by the manager of the clearing house and make the proper entries at the end of the season.

Q. Had you anything to do with the compilation of this book referred to in your examination, a copy of which you now hold in your hand?

A. Only as to the financial report which is embodied in this book.

Q. On page 112 of this book are figures relating to the clearing house. You have been assistant secretary of the Board of Trade for years. I will ask you to state of what matters the item of $62,227,165.25 at the bottom of the page is made up?

A. I am unable to tell you, sir, anything more than the statement in the report there.

Q. Of what is the next item at the right, at the bottom of the page $22,821,285.05 made up?

A. They are shown by this report to be balances. I am unable to tell you how they are made up.

1165 Q. You know nothing about that matter, except what you can see on that page of this book, is that right?

A. No, sir.

Q. Well, it is right, isn't it, do you know nothing about it, excepting that? A. Yes, sir, just as I say.

Q. Do you keep a record of the result of the action of the Board of Directors, as a Board? A. Personally, no, sir.

Q. Is such a record kept in your office? A. Yes, sir.

Q. Who keeps it?

A. It is kept by the secretary, written up by a man stenographer who is in attendance upon the directors' meetings.

Q. Is that book kept so that it is not open to free inspection by members of the Board?

A. The members of the board have a right to look at that book after the minutes reported in it have been approved by the directors, any member coming into the office.

Q. That does not exactly answer my question. Is the book kept so that it is not open to the free inspection of the members of the Board? A. Yes, sir.

Q. Is it kept so that it is not open to your free inspection?

A. Yes, sir.

Q. Is there a record kept of the proceedings of the Board of Directors in the matter of expelling members? A. Yes, sir.

Q. Is there a record kept of the proceedings at the meeting where they are considering the question of expelling members?

A. Yes, sir.

Q. Is there a record kept of the testimony there taken?

A. Yes, sir.

Mr. Robbins: I want to object to all this. I cannot see what that has to do with this case.

Mr. Jenks: How do you know?

Mr. Robbins: Well, I want the Master to rule.

The Master: I think I will let it in.

Mr. Robbins: You overrule the objection?

The Master: Yes.

Mr. Jenks: Have you a record of the testimony in the case of McLain Brothers & Company?

Mr. Robbins: Same objection.

1166 The Master: Overruled.

A. Personally, no, sir. I presume the report of the directory would show it.

Mr. Jenks: Q. Who keeps those reports?

A. Those are kept in the vault in the office.

Q. Under whose control are they?

A. Mr. George F. Stone, Secretary.

Q. That is the same office you are in, you are his assistant?

A. Yes, sir.

Q. But those reports are not under your control?

A. I have no occasion to look at them.

Q. Have you free access to them? A. Yes sir.

Q. Have you a recollection of the case I refer to, McLain Brothers & Company? A. Yes, sir.

Q. When was that hearing before the Board of Directors?

A. I think in June, 1900.

Q. When were you connected with the Board of Real Estate Managers? A. From June, 1882 until 1888.

Q. Do you know whether many of the rooms of the Board of Trade building are rented out to different people who pay rent therefor? A. At the present time, sir?

Q. Yes? A. Yes, sir.

Q. And for how many years has that been the case?

A. Well, the building has been rented since 1885.

Q. Have these rooms been occupied all the time by tenants of the Board of Trade?

A. Most of them. At times there have been vacant offices, but not a great many.

Q. About how many offices are rented by the Board of Trade to different people who pay rent therefor?

Mr. Robbins: I object to that on the ground it is irrelevant.
The Master: Overruled.

A. The entire office building is rented to members of the board. All the occupants are members of the Board.

1167 Mr. Jenks: That was what I wanted to get at. How many of them are there occupying offices in that building for which they pay rent?

A. I should say about 75 at present, 75 different firms, parties.

Q. How many of those occupants have blackboards in their offices, upon which are posted the market reports?

A. Only half a dozen or so, the occupants of the lower floor.

Q. Do you know any reason why occupants of the lower floor have blackboards, while those of the other floors have not?

Mr. Robbins: That is objected to as calling for his opinion.

Mr. Jenks: Is it because it is more convenient for people to come in and look at the blackboards on the first floor than it is on the floors above?

Mr. Robbins: I object to that.
The Master. Sustained.

Mr. Jenks: Q. You, by referring to this book again, at page 63, Roman numerals, will see an item under the head of "Receipts from Real Estate Department," $116,910.85. Is that item made up of rents collected from the tenants occupying a portion of that building?

A. Principally from rents, some portions of it for electric light service, and some for janitors' service.

Q. Do the janitors pay to the Board of Trade something for the privilege of working there? A. No, sir.

Q. Then how does the Board of Trade get any money from that?

A. The Board of Trade furnishes the janitors service, or nearly all of it, free to the tenants. There is but an inconsiderably small amount received, in this item of $116,910.85 from janitors' services.

Q. Then again, electric light, does the Board of Trade run an electric light plant and furnish the light to the tenants?
A. Yes, sir.

Mr. Jenks: That is all.

The Master: Any cross-examination?

1168 Mr. Robbins: Not now. I will reserve the right.

And thereupon at 12:40 o'clock P. M. an adjournment was taken until 2 o'clock P. M. of the same day, December 6th. 1901.

December 6th, 1901, 2:00 P. M.

Parties met pursuant to adjournment.

William S. Warren, recalled on behalf of the defendant for further examination by Mr. Jenks, testified as follows:

Q. Mr. Warren, have you brought here the books that I asked for yesterday?
A. I brought the figures taken from the books.
Q. Showing what?
A. Showing the total purchases of grain for future delivery during the year 1901, and the amount delivered on the same.
Q. That is, in your commission business? A. Yes sir.
Q. What is the total dealings in commodities for future delivery during the year 1901?
A. Up to date the purchases amount to 75,440.000.
Q. And the deliveries amount to how much?
A. And delivered 10,535,000.
Q. Was that 10 millions delivered by the actual handing over of warehouse receipts?
A. The actual warehouse receipts handed in and paid for amount of 3,145,000.
Q. How were the deliveries between the three millions and the ten millions made?
A. Those were made by delivery notices as provided by the rules of the Board.
Q. Mr. Warren, let me understand that. You are now speaking of the deliveries that were made to you?
A. Yes sir.
Q. To your house? A. Yes sir.
Q. The actual deliveries of warehouse receipts that were made to your house and for which you paid were how much? Three million what? A. 145,000.

1169 Q. And that was all that you received that you did pay for? A. Yes sir.
Q. How much did you deliver out that you received pay for?
A. Well, I didn't go any further than that investigation. In fact—

Q. Then—

Mr. Robbins: Answer, Mr. Warren. Finish.

A. The bookkeeper only had just time to get this far.

Mr. Jenks: He said he didn't get any farther.

Mr. Robbins: You stopped him.

Mr. Jenks: I stopped him when he answered the question that he didn't go any farther.

Q. Then this 7 millions and odd that you delivered by notice, did those delivery notices start from your office?

A. No sir.

Q. Did any of them stop with your office?

A. Of the 7 million, no.

Q. Do you know through how many different hands those notices passed before they came to you, and before they stopped after they were in your hands? A. I do not.

Q. The 7 millions that you say were delivered by notices, those transactions were settled up by you by merely paying or receiving he difference in the purchase and sale price of the commodities, weren't they?

A. Between the—differences are adjusted between the values of the property at the purchase and sale prices.

Q. Well, I don't see any difference; maybe you do. The difference in the two prices, the contract price, the purchase and the contract price of sale was all that was paid or received by you in winding up those transactions where the notices of delivery were given, weren't they? A. Yes sir.

Q. And those matters were put on the clearing house sheet and passed through the clearing house, just the same as though the deals had been rung up, were they not?

A. Yes sir,

Q. Now, the 3 millions that you paid for, that were delivered to you, did you deliver up any more that that three millions which you actually received? A. I don't know.

1170 Q. Well, you didn't deliver anything that you didn't receive, did you?

A. Well, in the total volume of our business I may have.

Q. Well, not much more. You didn't deliver out much more than you had, did you?

A. On these specific contracts I certainly could not have done so.

Q. Mr. Warren, I want to get at a little of the mode of the employes of the Cleveland Telegraph Company, in gathering reports which are sent out as market reports, and I will state a case to you: Suppose I am a member of the Board, as well as yourself, and I want to sell to you 5 thousand bushels of May wheat, at a price—we will call it 75 cents, which you accept at the pit; does the person who gathers the market reports

take that down as the price of May wheat for the purpose of sending is out as a market report? A. Yes.

Q. Then we will suppose that on the same day I say that I will buy 5 thousand bushels of May wheat from you at 74 cents, and you say that you will sell it at that price, what do they do at the pit? Is that taken down by the gatherers of the market reports and sent out as a market report?

A. If it is at any change in price from the last transaction.

Q. Well, the way I put it, one is at 75 cents, and the other is at 74 cents, that would be a change in the price?

A. Well, if Mr. Robbins a moment before had sold Mr. Hill 5 thousand at 74, the deal wouldn't cut any figure in the transaction.

Q. I am assuming there was a change in the price?

A. If there was a change in the price it would, sir.

Q. Suppose this made a change in the price?

A. It would constitute a quotation.

Q. Now, that trade between you and me, I have sold to you and have bought from you the same commodity for the same delivery, but at a different price, one side of it is 75 cents and the other side is 74 cents. According to the practice over on the Board you and I may balance those two contracts, may we not? A. Yes, sir.

1171 Q. Without delivery, cancel the contracts by going through the clearing house with our respective clearing house sheets, and one of us claiming from the other that one cent a bushel and the other paying the one cent a bushel through the clearing house; that would end the transaction between us, would it? A. Yes.

Q. And we settle those contracts upon the difference in the two prices, one 75 cents, and the other 74, that is right, isn't it?

A. You settle it on the difference in value of the two parcels of wheat.

Q. And the value is fixed by the two prices? A. Yes sir.

Q. Is your commission business on the Board of Trade conducted in the same manner on the floor as that of other members of the Board of Trade in the regards that you have testified about?

Mr. Robbins: That is objected to. You have had that question up a good many times, Mr. Jenks. You cannot prove the manner of business of any other member of the Board of Trade, by Mr. Warren.

Mr. Jenks: The President of the Board, who knows?

Mr. Robbins: He don't know anything about that.

Mr. Jenks: If he don't know how they do business there, I will find out that fact.

The Master: What is the question?

(Question read.)

Mr. Robbins: It is that same question put differently. Generally, it has been "Is the business of the other members conducted like yours?" Now, he insists on an answer. I maintain that that is calling for an expression of the witness as to his opinion of the manner in which the business of others is conducted.

The Master: If Mr. Jenks will promise not to examine any more witnesses along the same line, I will let him answer.

Mr. Robbins: The question is altogether too broad. I don't know what he means by it. I object to calling one party, or broker, or man, to testify as to whether somebody else's
1172 business is conducted in the same way until some foundation is laid for asking such a question.

Mr. Jenks: This witness occupies a different position from any of the others. He is President of the Board of Trade.

The Master: I was just watching if we couldn't shorten this thing up. It seems to me you are introducing a great many witnesses along the same line to prove the methods of doing business on the Board of Trade. Now, you should establish by Mr. Warren the particular method in his firm of conducting their transactions on the Board.

Mr. Jenks: If they could assure me that the rest of them did the same thing.

The Master: Wouldn't you stop right there and not put any more witnesses on on that point? I think that an agreement of that kind would shorten it.

Mr. Robbins: I don't admit it. If he wants me to admit the rings are made under the rules and the deliveries made under the rules, that is another thing. But to say one man's business is like another's—

Mr. Jenks: If you will admit that all of the business done on the Board of Trade is wound up and canceled by the ringing system and settled through the clearing house, and done in accordance with the rules of the Board of Trade in that regard, I will admit it.

Mr. Robbins: Yes, you will, no doubt about it. But I won't. You might as well go on.

The Master: I don't see any other way than to put on about 20 members to prove this is a fair sample of how the business is done.

Mr. Robbins: Mr. Jenks wants me to admit that all business on the Board of Trade is closed by rings.

Mr. Jenks: Very well. Let's get the question again.

(Question read.)

1173 The Master: This witness is not competent to answer that question so far as he has qualified himself.

Mr. Jenks: I want to except to the ruling of the Master.

Q. Mr. Warren, do you know how other members of the Board of Trade conduct their business at the pits and on the floor of the exchange?

Mr. Robbins: Same objection.
The Master: He may answer that.
A. What is the ruling?
The Master: Do you know?
A. I know they are required to conduct their business according to the rules of the Board of Trade.
The Master: That is no answer.

Mr. Jenks: I move to strike out the answer.
The Master: It is stricken out.
Mr. Jenks: Now, will you please answer the question Yes or no?

The Master: Do you know how, as a matter of fact, they actually transact their business there?
A. I know that they are transacted in the manner laid down by the rules of the association.
Mr. Jenks: I move to strike out the answer.
The Master: It may be stricken out.
Mr. Jenks: Read the question.

(Question read.)

A. I have no personal knowledge of the manner of any person's business except my own.
Q. As President of the Board of Trade you don't know how any other member of the Board transacts or conducts his business which is transacted and conducted on the floor of the exchange room of the Board of Trade, is that correct?
A. I know he has to do it according to the rules of the Board of Trade.

Mr. Jenks: I move to strike out the answer.
The Master: It may be stricken out.

1174 Mr. Jenks: I will add to that question, to your own personal knowledge?
The Master: He has not answered the question yet.

Mr. Jenks: Answer.
A. I cannot answer that question in all its details. I may know in a general way. No two firms perhaps conduct their business exactly, in all its minutiae and minute details in the matter of their accounts, and everything of that sort, alike.
Q. You have not been asked that, have you? Mr. Warren, you are a man of a little extra intelligence. Now, if you don't understand the question that I put to you, just say so. Do you know how other members of the Board of Trade transact their

business on the floor of the exchange room and at the pits, in the business that they do transact there, and will you answer the question Yes or No?

A. Will you make it a little clearer what class of the business you refer to?

Q. That which they do at the pits, on the floor of the Exchange room, and at the same places where you transact your business.

A. Well, I know in general terms how they do it, yes.

Q. How? A. I know in a general way how they do it, yes.

Q. Do they do it in the same way that you have described as the manner in which you do your own business?

Mr. Robbins: I object to that unless he is confined to what takes place in the pit.

The Master: He has confined it so I understand.

Mr. Robbins: Is that clear?

The Master: I say if he knows in a general way, he may answer.

(Question read.)

Mr. Robbins: That is confined to what is done in the pit.

A. The only description I remember of having testified to were those hypothetical trades between you and myself. Is that what you refer to, Mr. Jenks?

Mr. Jenks: I want to know whether the other mem-
1175 bers of the Board do their business in the same way that you do your business at the pits?

A. In a similar manner, yes, sir.

Q. At the time you made some sort of an arrangement with the Cleveland Telegraph Company as to market reports, were you, the Board of Trade, seeking to take from the Western Union Telegraph Company the gathering of the market reports?

A. We were seeking to get a contract from the Western Union Telegraph Company upon different terms to what they were already—under which they were gathering the quotations.

Mr. Jenks: I move to strike out the answer as not responsive.

The Master: I think that is responsive.

Mr. Jenks: At the time you made the agreement with the Cleveland Telegraph Company, you were seeking to get an agreement with the Western Union Telegraph Company under different terms from the one that had existed between the Board of Trade and the Western Union, is that the fact? A. Yes, sir.

Q. You were not seeking to put the Western Union Telegraph Company off of the floor of the exchange room of the Board of Trade, is that right? A. No, sir.

Q. You were not? A. No, sir.
Q. You did not put them off the floor?
A. We did subsequently.
Q. You did something that you were not seeking to do then?
A. We offered the same contract to all the telegraph companies. One of them accepted it, consequently they obtained the service, and the others had the right.

Mr. Jenks: I move to strike out that answer as not responsive to the question.
Mr. Robbins: I think it is responsive.
The Master: Overruled.
Mr. Robbins: It is not what you wanted, but it is responsive.

Mr. Jenks: Has the Board of trade a contract now
1176 with the Western Union Telegraph Company to distribute market reports? A. Yes, sir.
Q. Where is that contract?
A. It is in the Secretary's office, I believe.
Q. Has the Board of Trade a contract now with the Postal-Telegraph Cable Company to distribute market reports?
A. Yes, sir.
Q. When were each of those contracts entered into?
A. I don't know the date, Mr. Jenks.
Q. Do you remember the year? A. Yes, sir.
Q. The month? A. No, I wouldn't swear to the month.
Q. What year was it? A. It was this year.
Q. 1901? A. Yes, sir.
Q. Was it after the 9th day of June? A. I don't remember.
Q. Well, what is your best impression about it?
A. My impression is it was before that date.
Q. What time?
A. It was some time during the spring or early summer of this year. That is as near as I can testify.

Mr. Jenks: Mr. Robbins. as solicitor for the Board of Trade, will you produce those two contracts for our inspection?
Mr. Robbins: They are already in the evidence.
Mr. Jenks: The two contracts that he speaks of?
Mr. Robbins: Yes, they were both in one contract under date of April 15.
Mr. Jenks: 1901?
Mr. Robbins: Yes. I think you have got my original contract among your papers. I cannot find it here. It was introduced in evidence.
Mr. Jenks: Is that so?
Mr. Shea: I know he introduced a paper I thought purported to be that.
Mr. Robbins: Mr. Jenks, you must have them.
Mr. Harkless: They are filed in the bill in this case.

Mr. Jenks: Q. The Western Union Telegraph Com-
1177 pany at the time you made the agreement with the Cleveland Telegraph Company had been gathering the quotations and distributing them throughout the country for how many years? A. I don't know.

Q. For a number of years? A. Yes, sir.

Q. The Cleveland Telegraph Company is now and has been since the first of August, 1900, gathering the market reports on the floor of the exchange room, just as the Western Union Telegraph Company had been doing previous to that time, is it not? A. Yes, sir.

Q. And those quotations are the quotations of prices made of commodities dealt in by the members of the Board of Trade, is that true? A. Yes, sir.

Q. And at the pits? A. Yes, sir.

Q. And at the pits there is sent out as a report of the market every change in the market price in the commodities there dealt in? A. Yes, sir, so far as possible.

Q. Mr. Warren, is the Cleveland Telegraph Company under the control of the Board of Trade of the City of Chicago?

A. No, sir.

Q. The contract that the Board of Trade had with the Cleveland Telegraph Company was in existence before the year 1901, and by that contract the Cleveland Telegraph Company gathered and sent out these market reports, did they not? A. Yes.

Q. Now, if that is true, that it gathers those market reports and pays the Board of Trade for them—that is true, isn't it?

A. Yes.

Q. If that is true, why does the Board of Trade of the City of Chicago have a contract with the Western Union Telegraph Company relating to these market reports?

A. Well, they have it for the purpose of distributing the quotations over the country because the telegraph company wanted it.

Q. The telegraph company wanted what?

A. Wanted the contract.

Q. Did the telegraph Company want the contract or want the quotations? A. Why, they wanted both.

Q. Why did the Board of Trade of the City of Chicago enter into a contract with the Postal Telegraph & Cable Company?

1178 A. For the same reason.

Q. Then it is fact, is it, that the Cleveland Telegraph Company would not give to the Western Union and the Postal Telegraph-Cable Company those market reports?

A. Prior to the making of the contracts, no.

Q. The Cleveland Telegraph Company would not give the market reports to anybody or sell them to anybody, is that a fact? A. Yes—no, that is not a fact.

Q. Would the Cleveland Telegraph Company sell those market reports to the Western Union Telegraph Company?

A. No.

Q. It would not sell them? A. No, sir.

Q. Would it sell the market reports to the Postal Telegraph Cable Company? A. No.

Q. Would it sell the market reports to anybody?

A. They would sell them to any one—

Q. Answer it Yes or No. A. Yes.

Q. Does the Cleveland Telegraph Company now give to the Western Union Telegraph Company, for transmission over its wires, the continuous market reports of the Board of Trade of the City of Chicago? A. I don't know.

Q. Does the Cleveland Telegraph Company now give to the Postal-Telegraph Cable Company the continuous market reports from the Board of Trade to be transmitted over the country on the wires of the last mentioned telegraph company?

A. I don't know.

Q. Do the Western Union Telegraph Company and the Postal Telegraph-Cable Company transmit the continuous market reports of the Board of Trade of the City of Chicago over the country on their respective wires? A. Yes, sir, they do.

Q. And do you know where the Western Union Telegraph Company gets the market reports to transmit over its wires?

A. These quotations are—

Q. Wait a minute? Do you know where it gets them?

A. Yes, I know.

Q. From whom does it get them. Give us the name of the institution.

1179 [Q.] Well, I cannot answer that question.

Q. You don't know from whom it gets them?

A. No.

Q. Do you know from whom the Postal Telegraph-Cable Company gets the market reports that it sends out?

A. No, sir.

Q. You don't know how the members of the Board of Trade of the city of Chicago, who happen to be outside of the city gets the market reports, do you? A. Get them by wire.

Q. Whose wire?

A. The wire—whosever wire they employ.

Q. Get them by private wire always and only?

A. Some of them, some of them get them by ticker service.

Q. As a matter of fact, you don't know by what means the members of the Board of Trade outside of the City of Chicago get the market reports, is that right?

A. I have answered those questions to the best of my ability, Mr. Jenks.

Q. Well, as a matter of fact, you don't know, do you?

A. No, I don't send them.

Q. And you don't know how they get them?

A. Yes, I do. I know they got them by telegraph.

Q. Well, do you know over whose wires they get them?

A. Over the wires of the Western Union Telegraph, or the Postal Telegraph Company.

Q. That answers it. And in no other way?

A. They may be distributed in one place over the wires of the Chicago & Milwaukee Telegraph Company.

Q. What place is that? A. Milwaukee.

Q. Aside from that, the members of the Board of Trade, outside of the City of Chicago, get market reports in no other way than over the wires of the Western Union or the Postal?

A. Except that some have leased wires from the telephone company.

Q. And some lease wires from the Western Union Telegraph Company? A. Yes, sir.

Q. And from the Postal Telegraph Company? A. Yes, sir.

Q. And are not those wires under the control of the members of the Board of Trade who lease them?

1180 A. I don't know what their contracts are with the telegraph company.

Q. Were you ever in Cincinnati? A. Yes sir.

Q. How recently? A. Not for 20 years.

Q. Do you know where the Odell Commission Company got the continuous market reports that go out from the Chicago Board of Trade? A. I do not.

Q. Did you ever know how they got them? A. No, sir.

Q. Do they get the continuous market reports from the Western Union Telegraph Company? A. I don't know.

Q. Do they get them from the Postal Telegraph Cable Company? A. I don't know.

Q. Did you swear to the bill of complaint in this case?

A. I don't remember.

Q. If you did did you know the contents of the bill at the time? A. Yes sir.

Q. If you swore that the Odell Commission Company got those market reports from the Western Union Telegraph Company, was that true?

Mr. Robbins: That is objected to.

Mr. Jenks: I will withdraw the question.

Q. Is there any record kept anywhere, either in the clearing house, or anywhere else to your knowledge, that will actually show the deliveries made on deals conducted on the Board of Trade?

A. You mean in any department of the Board of Trade?
Q. Yes, the clearing house. A. No, sir.
Q. You understand the operations of the Board of Trade clearing house, don't you? A. In a general way, yes.
Q. In the report of the Board of Trade contained in the book which is marked Defendant's Exhibit A, 12-5-1901, at page 112, is the sum of $62,227,165.25 as a total of the clearings for the year 1900, for the months of that year. Do you know of what matters that sum is made up?
A. Why, I presume it is the amount of money passing through the clearing house.
1181 Q. Then there is also on that page the footings of balances for that year, the sum of $22,821,284.05. Of what is that total sum made up? A. I don't know.
Q. Don't the $62,227,165.25 represent the difference in market prices of commodities which were rung up and cleared through the Board of Trade clearing house?
A. Not altogether.
Q. What is there in that item besides that?
A. Differences due and paid on deliveries.
Q. You have already stated that the actual deliveries were by means of warehouse receipts which were taken to the office and for which a check was given, have you not?
A. I don't think I made any discrimination. We call delivery by notice an actual delivery.
Q. I don't. Now, are the actual deliveries included in this item of 62 millions, or are the deliveries by notice the only ones that are included in this 62 millions?
A. The deliveries by notice.
Q. By notice? A. Yes.
Q. And that is where the commodity is not paid for at all?
A. Yes, sir, some one pays for it.
Q. But not included in this 62 millions? A. No, sir.
Q. The only matter that [—] included in the 62 millions relating to deliveries is merely the difference in the contract prices? A. Yes, sir.
Q. Mr. Warren, is it a fact that the great bulk of grain that comes to Chicago is shipped through to seaports?
A. Ultimately it is.
Q. Why do you put in the word "ultimately?"
A. Why, a very large proportion of it stops here a while before it goes on to the sea board.
Q. Well, what made you think of that. I didn't ask you about "ultimately." You think it has to stop here and pay toll to the Board of Trade before it goes through?
A. A large proportion of the grain that comes to Chicago is bought to come to Chicago.

Q. Why, that is not what I asked you, is it? Read the question.

(Question read.)

1182 A. Is that the question you wish me to answer?

Q. Yes. Does it stop and have to pay toll in order to get through? A. It does not have to, no.

Q. I thought not. Mr. Warren, is it not a fact that the most of the grain and provisions that come to Chicago have been purchased away from the Board of Trade?

A. I don't think it is.

Q. And isn't it a fact that the most of the grain and provisions that are shipped east of Chicago are purchased and shipped at places other than the Board of Trade of the city of Chicago? A. I don't think so.

Q. Do you know that any of it is?

A. I don't know of my own knowledge.

Q. Do you buy grain anywhere, in any place than on the Board of Trade? A. Yes, sir.

Q. Where? A. Buy it in Kansas, Iowa.

Q. You know that that grain that you deal in, that you buy outside, was not first purchased on the Board of Trade, don't you? A. The bids go out for it from the Board of Trade.

Q. The Board of Trade sends out the bid?

A. The member of the Board of Trade sends them.

Q. Who is the member? A. I am.

Q. Do you call yourself, when you send out a bid, the Board of Trade, of the city of Chicago?

Mr. Robbins: Mr. Jenks, isn't about time we had a cessation of this?

Mr. Jenks: Do you object to the question?

Mr. Robbins: Yes, I object to everything that has been going on here, that has been protracting this record. I don't care how much the record shows.

Mr. Jenks: Read the question.

(Question read.)

Mr. Robbins: I want a ruling on that.

The Master: Objection sustained.

1183 Mr. Jenks: Do you send out those bids from your own office?

A. They are sent sometimes from the office, and sometimes from the exchange room.

Q. Who are they signed by?

Mr. Robbins: I object to that as immaterial.

The Master: Objection sustained. I think, Mr. Jenks, I would like to have this in the record about this time: The

Master is of the opinion that testimony already taken of different members of the Board of Trade sufficiently establishes the course of dealing of the Board of Trade, and that the duplication of that class of testimony is unnecessarily encumbering the record, but in view of the nature of the answer, the Master feel that he is not empowered to shut off the taking of further testimony duplicating that already taken. I wish that in, so that the Court can deal with the testimony taken hereafter on those issues.

Mr. Jenks: Q. Mr. Warren, the Board of Trade of the City of Chicago does allow the continuous market reports to be sent out over the country and received and used by some people, does it not? A. Yes sir.

Q. Does it voluntarily permit anybody to receive and use in the purchase and sale of commodities that are dealt in on the floor of the exchange room of the Board of Trade, those market reports, except that person does business with members of the Board of Trade?

Mr. Robbins: I object to that question on the ground that the contracts have already been introduced in evidence under which these Telegraph companies receive the quotations.

The Master: I think the question is competent.

A. No such distinction is drawn in the distribution of the quotations.

Mr. Jenks: That is not responsive to the question. Does the Board of Trade voluntarily allow a dealer in commodities that are dealt in on the floor to receive and use the continuous market reports unless he does business on the Board of
1184 Trade or with one of the members of the Board?

A. Yes.

Q. Who? A. I don't know who.

Q. Then how are you able to answer that question Yes?

A. If any such person exists he could have them unless there was some other bar to his receiving them than that he did not do business with the members of the Chicago Board of Trade.

Q. What would be the bar? A. That he ran a bucket shop.

Q. What is a bucket shop as defined by the Board of Trade of the City of Chicago?

Mr. Robbins: That is objected to.

The Master: On what ground.

Mr. Robbins: Why, what is a bucket shop? The law fixes a bucket shop, and you don't have to call a witness to prove what a bucket shop is. What the Board of Trade defines as a bucket shop is not material in this case. Under what theory is the Board of Trade definition of a bucket shop material in this case?

Mr. Harkless: Don't your bill state that the defendants are running a bucket shop, sworn to by this man.

Mr. Robbins: What of it? . Do you want to ask him whether this man is a bucket shop?

Mr. Harkless: He has used that term in the bill.

The Master: Objection overruled.

Mr. Jenks: Read the question.

(Question read.)

A. We take the different definitions of the statute of the State of Illinois.

Q. What is it? A. I cannot repeat it.

Q. Then you do not know what a bucket shop is, as that term is used by the Board of Trade of the City of Chicago, in its rules?

Mr. Robbins: Same objection.

The Master: Overruled.

A. Yes, I know.

1185 Mr. Jenks: What is it?

A. It is a place where dealings are had upon the fluctuations in the market price without any bona fide transaction.

Q. That is a bucket shop, is it? A. Yes, sir.

Q. Does that constitute the whole of a bucket shop?

Mr. Robbins: The same objection.

Mr. Jenks: According as the term is used on the Board of Trade.

Mr. Robins: The same objection.

The Master: Objection overruled.

A. In a broad way, yes.

Mr. Jenks: Do you mean by that, without a bona fide transaction, that settling on differences in market price would make a bona fide transaction of it?

Mr. Robbins: Same objection.

The Master: Overruled.

A. I don't understand the question.

Mr. Jenks: In your meaning, would it be a bona fide transaction if the parties did not intend to receive or deliver, but did as a matter of fact settle on [differencee] in market price?

Mr. Robbins: Same objection.

The Master: Overruled.

A. If the parties did not intend to receive or deliver, that says, does it?

Mr. Jenks: Yes. A. No, sir, it would not.

Q. But if they did intend to receive or deliver, and did then settle on the difference in market price, that would be a bona fide transaction? A. Not in a bucket shop.

Q. Not in a bucket shop? A. No, sir.

Q. If parties dealt together, one contracted from the other to buy 10 thousand bushels of May wheat, and afterwards sold out that 10 thousand bushels of May wheat to the same person, and they settled both contracts by payment of the differ-
1186 ence in market price, would that be a bona fide transaction according to the rules of the Board of Trade?

Mr. Robbins: Same objection.

The Master: Overruled.

A. Yes.

Mr. Jenks: Would that transaction have to be conducted on the Board of Trade in order to make it bona fide?

A. I think it would.

Q. If that same transaction was conducted in any other place kept for the purpose, would that place be defined, according to your notions, as a bucket shop?

A. You could not make the same transaction any other place The rules of the Board of Trade are part of every contract that is made on the Board of Trade.

Q. If you do not agree with our Supreme Court, it is not your fault, I suppose.

Mr. Robbins: Same objection.

Mr. Jenks: But if the same kind of contract is made anywhere else in the purchase and sale of commodities and they ring up the deals and settle them by merely paying or receiving the differences, is that a bucket shop transaction according to your notion?

Mr. Robbins: The same objection.

The Master: Overruled.

A. The same kind of a transaction as what, for instance?

Mr. Jenks: Read the question.

(Question read.)

Q. I mean anywhere away from the Board of Trade?

A. You could not make the same kind of contract away from the Board of Trade, because it would not be subject to the rules of the Board of Trade.

Q. Do you define as bucket shop deals, such as are not made under the rules of the Board of Trade?

Mr. Robbins: Same objection.

The Master: Overruled.

1187 A. Not necessarily.

Mr. Jenks: Well, if as a matter of fact, a man kept a place and he bought and sold for future delivery and rung up those trades by merely settling the difference between the purchase and the sale price, according to your notion, would that be a bucket shop deal?

Mr. Robbins: Same objection.
The Master: Overruled.

A. Yes, sir.

Mr. Jenks: Q. Mr. Warren, in the Tribune of this morning there appeared an article in relation to prices that obtained yesterday on the Board of Trade, and in that article it read as though you had been interviewed upon the subject and had made a statement like this: "There never was a big, broad bull market like the present market in wheat, said President Warren, with the public interested, and the price mounting steadily and gradually at first, that it did not culminate at some point with a sharp primary advance of three cents to five cents. The increased public interest in the grain market is attributed in part to the closing of so large a percentage of the bucket shops through the efforts of the administration."

Mr. Robbins: Same objection.

Mr. Jenks: Did you state that? A. No, sir.

The Master: Objection sustained.

Mr. Jenks: You did not?

Mr. Robbins: Read the rest of the Tribune into the record.

Mr. Jenks: As a matter of fact, do you contend that the business of the members of the Board and the Board is increased when bucket shops are closed?

Mr. Robbins: Same objection.
The Master: Overruled.

A. Yes, sir.

Mr. Jenks: If the bucket shops are closed, is the business of the Board of Trade increased because the persons who
1188 deal at the bucket shops would deal on the Board of Trade through its members?

Mr. Robbins: Same objection.
The Master: Overruled.

A. Yes sir.

Mr. Jenks: Mr. Warren, do you know anything about the quantity of visible supply of wheat for the year 1900?

A. Only approximately.

Q. Do you know anything about the supply of wheat in territory [contributory] to Chicago that could be used in carrying out deals for future options during the year 1900?

Mr. Robbins: I object to that. It is only his opinion on the subject. He is not shown to have sufficient knowledge to give an opinion of it.

The Master: Overruled.

A. You want to know how many bushels, Mr. Jenks?

Mr. Jenks: I want to know if you know anything about it?

A. I know approximately.

Q. Where do you gain your information?

A. In the commercial publications, in the Government report on crops, and so forth.

Q. You know nothing different, other, or separate from what appears in this book, the 43rd Annual Report of the Trade and Commerce of Chicago?

A. I don't know what appears in that book.

Q. Well, from what reports do you get your information?

A. Oh, we get them from time to time, we get them every day in the year through a variety of sources.

Q. Do you know what the visible supply of wheat in the City of Chicago was on the 2nd day of this month?

A. Approximately.

Q. How much? A. About 10 million bushels.

Q. Do you know the supply of corn in elevators in the City of Chicago on the second day of this month?

A. Approximately.

Q. How much? A. About 9 million bushels.

Q. Do you know the supply of oats in Chicago on the same day? A. Approximately.

1189 How much? A. About 2 million bushels.

Q. Do you know the supply of provisions that are dealt in on the Chicago Board of Trade that were in the City of Chicago on the second day of this month?

A. Approximately.

Q. How much?

A. About 25 or 30 thousand barrels of pork, about 19 thousand tierces of lard, about 20 million pounds or ribs.

Q. Where did you get that information?

A. I get it from the statements published on the Board of Trade.

Q. The tierces of lard that you speak of, do you know as a matter of fact that the lard was not in tierces at all, but was estimated from pounds in tanks? A. No, I don't know that.

Q. You don't know? A. No.

Q. Do you know that manufacturers do not put up lard in tierces now as they used to? A. No, I don't know that.

Q. Don't you know that the lard is distributed in smaller quantities, cans, put up in cans and distributed in that way?
A. Yes, I know it is distributed in a variety of ways.
Q. And that where it is in store, it is in large tanks?
A. I don't know that.
Q. The wheat, the 10 million bushels of wheat that you say were in Chicago, can you tell us the grade of that wheat?
A. No, sir.
Q. You don't know how many bushels of number two and number one wheat there were in store?
A. I know approximately how much number two there was.
Q. How much number two? A. About 4-1/2 millions.
Q. Number two wheat in the—
A. I beg your pardon, contract wheat is what I meant to testify to. That includes number two Red Winter and number one Northern Spring.
Q. There was about four million bushels of that?
A. I think 4-1/2 million, 4-1/2 to 5 million.
Q. 4-1/2 to 5 millions of wheat that would be deliverable under contracts made on the Board of Trade here?
A. Yes sir.
Q. How much corn was in store that was up to grade so that it was deliverable under contracts made on the Board of Trade?
1190 A. I couldn't testify to that, Mr. Jenks, I have not been watching it.
Q. How much wheat was dealt in by your firm for the December option—did I ask you that before?
A. I don't think you did.
Q. No, I think not. A. I don't know.
Q. I thought that was a part of the information that you were to get?
A. The information I got was for the entire year.
Q. I know it was. Was that this year or last year?
A. This year.
Q. But can you give us an estimate of the quantity that you dealt in for December options?
A. Yes, I will give you an estimate.
Q. How much? A. Probably 5 million bushels.
Q. Can you give us an estimate of the amount of corn that you dealt in for the December option, I mean your firm or corporation? A. Probably two or three million bushels.
Q. Did you deal in oats? A. Yes sir.
Q. About what quantity for the December option?
A. Well, probably a million or a million and a half bushels.
Q. For the December option how much wheat have you delivered up, actually delivered and received pay for?
A. I don't know.

Q. Can you make an estimate of it?
A. No, sir, I wouldn't make an estimate of it.
Q. Or the corn? A. No, sir.
Q. Or the oats? A. No
Q. Or that you have delivered?
A It is all included in the estimate for the entire year which I gave you.
Q. Yes. All that you have delivered has been done within a week, hasn't it, this week? A. Yes, sir.
Q. And you don't know how much it is? A. No, sir.
Q. Have you delivered any? A. I think we have.
Q. But you are not sure of that?
A. I know we have received—I wouldn't testify that we have delivered.
Q. What is your best recollection as to whether you have delivered out anything?
A. I think we have delivered out some wheat.
1191 Q. Do you know how much? A. No, I don't.
Q. But you are not sure that you have delivered out wheat? A. No, I wouldn't swear to it.

Mr. Jenks: That is all I want.

Cross Examination

By Mr. Robbins:

Q. The settling price that you refer to in connection with this ringing system, that is the figuring price, is it not?
A. The what?
Q. The figuring price? A. Yes, sir.
Q. Wherein does this system of settlement by offsets that you have testified to, in your business, differ from that that is prescribed by the rules of the Board of Trade?

Mr Jenks: That is calling for the declaration of the witness.
The Master: I think those rules are introduced—
Mr. Robbins: We had that once before, just the same question and it was passed on favorably by the Master.
The Master: Objection sustained.

Mr. Robbins: Are you familiar with the ringing system prescribed by the Board of Trade rules?
A. Reasonably so, yes, sir.
Q. Does the system you have testified to, in your business, differ in any respect from the system therein defined?

Mr. Jenks: That is objected to.
The Master: Sustained.

Mr. Robbins: Do you have anything to do personally with this ringing system in your business? A No, sir.

Q. By whom is it done? A. Done by a clerk.
Q. Do you have personal supervision of it in any way?
A No, sir.
Q. Would you know about the actual manner in which it is done?
A. I know from hearsay and from the rules of the Board of Trade.
Q. Is your knowledge derived from the rules of the Board of Trade? A. In part.
Q. Are you familiar with this system of deliveries,
1192 by notice, that is prescribed by the rules of the Board of Trade? A Yes, sir.
Q. You speak of delivery notices: what have those delivery notices to do with this system that is prescribed by the rules of the Board of Trade?

Mr. Jenks: I object to that question for the same reason as before.
The Master: Sustained.

Mr. Robbins: Wherein does the system of delivery that you have referred to in your testimony differ from the one that is prescribed in the rules of the Board of Trade?

Mr. Jenks: The same objection.
The Master: Sustained.

Mr. Robbins: Mr. Jenks in his questions asks you if settlements are not made by payment of differences in market prices; are your trades settled by payment of differences in market prices, or by payment of differences between the selling price and the buying price?
A. Between the prices of the two contracts, being the market price at the time the contract was made.
Q. Do you know of any trades being made on the Board of Trade that are handled in any other way? A. I do not.
Q. Do you know of any more than one written contract between the Board of Trade and the Cleveland Telegraph Company? A. No, sir.
Q. Do you know of a verbal arrangement made after the written contract, by which the Cleveland Telegraph Company employs and has charge of the persons employed in collecting the quotations on the floor of the exchange?

Mr. Jenks: Just wait one minute, That would be perhaps a proper cross-examination, if this man was not the President of the Board of Trade; but as he is, I will object to this question, for the reason that I get out from the witness all that I could upon that subject, and now it is not proper for the attorney of the Board of Trade to ask its President a leading question upon that subject.

Mr. Robbins: Why don't you object that I have not the right of cross-examination?

1193 The Master: Overruled.

Mr. Jenks: Exception.

A. I think there was such an arrangement.

Mr. Robbins: Q. Has the Cleveland Telegraph Company numerous customers to which it serves quotations in the City of Chicago? A. They have.

Q. Does the Cleveland Telegraph Company pay the Board anything for the privilege of merely gathering the quotations on the floor of the exchange, or does it pay for the quotations?

Mr. Jenks: I object to that question.

The Master: I understand your contracts are in evidence.

Mr. Robbins: What of it? It was brought out on direct examination. Haven't I got the right to cross-examine?

The Master: What was brought out on direct?

Mr. Robbins: I have it here, Mr. Jenks asked whether the Cleveland Telegraph Company paid the Board of Trade for the privilege of being on the floor and collecting the Board of Trade quotations, and I asked whether the Cleveland Telegraph Company paid anything for that or whether they paid for the quotations.

The Master: Objection overruled.

A. They pay for the quotations.

Mr. Robbins: Q. Does it pay anything for the privilege of collecting them on the floor? A. No, sir.

Q. Now what do the other telegraph companies pay for?

Mr. Jenks: I object to that question. It is not cross-examination.

The Master: Was not that same question asked as to the others?

Mr. Jenks: No, sir.

Mr. Robbins: The question of the quotations—

Mr. Jenks: Yes, sir, but nothing about pay.

The Master: If it was asked it is proper cross-examination. If it was not, it is not.

1194 Mr. Jenks: It was not asked.

Mr. Robbins: It was asked.

The Master: I am inclined to think it is not competent.

Mr. Robbins: Q. Do you know whether the quotations are given by any of the four telegraph companies to any person in any city in this country, to any person that has not signed an application in the forms required under the contract between the telegraph companies and the Board of Trade?

A. To the best of my knowledge, they do not.

Mr. Jenks: I move to strike out that answer as not responsive to the question.

The Master: The question is, do you know? One way or the other.

Mr. Robbins: No, it is more than that, it calls for his knowledge.

Mr. Jenks: I cannot find out whether he knows; it is my privilege to ask for an answer Yes or No, but I will take the whole question. As you want to shorten the record, I object to the question and move to strike out the answer,

The Master: Now, answer the question the way you want to have it.

(Question read.)

Mr. Jenks: That is, do you know?

Mr. Robbins: Now, answer the question, please.

A. Read the answer please.

(Answer read.)

Mr. Jenks: I move to strike it out.

The Master: I think that may stand. I think it answers the question.

Mr. Robbins: Q. Mr. Warren, that $66,000,000 that Mr. Jenks read from the clearing house—

Mr. Jenks: I didn't read any 66.

Mr. Robbins: 62 million dollars; do you know whether that represents the difference in price or whether it repre-
1195 sents the sum total of the claims, of claims and off-sets on the clearing house sheet? A. No, I don't know.

Q. Is your business confined to making for future delivery for your customers on the floor of the exchange? A. No, sir.

Q. Describe what else you do.

A. We buy grain in the country; we buy grain in other markets, move it, distribute it.

Q. Do you ever make contracts for future delivery against that grain in the Chicago market? A. Yes, sir.

Q. That is what is called hedging, is it? A. Yes, sir.

Mr. Jenks: Did I ask him anything about hedging? I did not.

Mr. Robbins: You asked him about these contracts.

A. There was a question about hedging in the direct testimony.

Mr. Jenks: Well, go ahead; I am glad of it. I thought I forgot it.

Mr. Robbins: Q. I wish you would describe this question of hedging; what class of hedging you do, first.

A. Well, I buy grain in the country and put it in store, and sell against it for future delivery.

Q. Where? A. On the Board of Trade.

Q. Now, what happens when you get ready to move, to sell that grain, part with it?

A. Well, I may move the grain in here and deliver it on the contracts, I may sell it to some one else here; I may sell it to go in other directions, and when it is so delivered the contract is filled, or when so sold the contract covered by a purchase in the market.

Q. What quantities in your business do you deliver on those hedging contracts on the Chicago Board of Trade?

A. Well, that is a very general question. At times we deliver considerable; other times we deliver very little.

Q. You sell where it is to the best advantage to sell, at the time you determine to part with the grain?

A. When May corn was at a great premium last spring we delivered quite a large quantity of corn on contracts in the country.

1196 Q. Now, I wish you would describe what this hedging is more fully? A. Well, it is—

Q. What classes of persons engage in it?

A. Country buyers, elevator proprietors, shippers, exporters, importers in Europe, millers.

Q. Do the elevator proprietors in Chicago resort to that class of contracts upon the Board of Trade? A. Yes sir.

Q. Do the elevator proprietors of Chicago deliver at all on contracts for future delivery the grain in store?

A. Yes, sir.

Q. In what quantities? A. In millions of bushels.

Q. In what quantities for a given month have you known that to be done?

A. I wouldn't want to testify as to any specific quantity.

Q. Well, are large deliveries made frequently by elevator proprietors on future contracts? A. Yes, sir.

Q. What do you call large deliveries?

A. From a million bushels upward.

Q. How about pork packers, packers of mess pork and lard, do they hedge on their stocks on hand? A. Yes, sir.

Q. In the Chicago Board of Trade? A. Yes, sir.

Q. Have you ever done any hedging for these different classes of Chicago people? A. Yes, sir.

Q. Are deliveries ever made by these packers upon their hedging trades upon the Board of Trade? A. They are.

Q. To what extent? A. To a large extent.

Q. In the way in which these contracts for future delivery are made in the wheat pits, is there any way of distinguishing from anything that occurs at the time the transactions are made between those that will be completed by delivery, and those that will be subsequently off-set under the rules of the Board of Trade? A. There is not.

Q. Or any way of distinguishing either of these kinds of contracts from these hedging contracts? A. There is not.

Q. Or of distinguishing among the hedging contracts what ones delivery will ultimately be made on, and what ones will be closed by paying for that property, or making contra-trades?

A. No, sir.

1197 Q. Or any way of distinguishing from the quotations that arise from one class of transactions and those arising from another? A. No, sir.

Q. If a contract is once made upon the floor of the exchange and is not settled by off-setting, how would it be settled?

A. By delivery.

Q. Must it be settled by delivery, if not settled by off-set, under the rules of the Board of Trade? A. Yes.

Q. What classes of person do business upon the Board of Trade as members?

Mr. Jenks: I object to that question.

Mr. Robbins: I will first ask what kind of commodities are dealt in on the floor of the exchange.

A. Wheat, corn, oats, rye, barley, flax seed, timothy seed, clover seed, millet seed, hay, pork, lard, ribs, tallow, stearine.

Q. Bran, shorts and middlings? A. Yes, sir, and flour.

Q. Are those different commodities that you have named dealt in for cash delivery as well as for future delivery?

A. They are all dealt in for cash delivery, not all of them are dealt in for future delivery.

Redirect Examination

By Mr. Jenks:

Q. All of those commodities are dealt in on the Board of Trade are they? A. Yes, sir.

Q. On the floor of the exchange room? A. Yes, sir.

Q. What commodities are dealt in for cash delivery and not for future delivery? A. Mill feed.

Q. Is that all?

A. Well, probably millet and buckwheat and a few such field seeds as that are not sold for future delivery.

Q. Are the trades in those made at the pits? A. No, sir.

Q. Is the cash stuff, exclusively cash stuff sought for in the pits, and trades made in it at the pits? A. Sometimes.

Q. Very seldom? A. Rather seldom.
1198 Q. The pits are not for that purpose, are they?
A. They are.
Q. They are used generally for transactions in futures?
A. The greater part.
Q. An exporter of the commodity who intends to export it, and who makes a hedge sale of it on the Board of Trade, does that hedge sale stop him from exporting? A. No.
Q. If he does export right along and leaves his contract there, and ships his stuff to Europe, does he deliver that stuff here on the Board of Trade in filling his hedge contract of sale?
A. He might; he might cancel his sale for export, and deliver the property on his contract. The exporter will oftener hedge by buying than he will by selling.
Q. If it is not too much trouble I wish you would answer my question.

(Question read.)

Q. The question is, whether he delivers that stuff that he has shipped to Europe? A. No, sir.
Q. On his hedging contract of sale? A. No, sir.
Q. How does he get out of that hedging contract of sale?
A. He buys it in.
Q. Then how does he settle the two contracts, the one of sale, and the other of purchase?
A. He may settle them by delivery, he may settle them by off-set.
Q. He has shipped off the stuff that he contracted to sell?
A. The man he buys of may deliver to him, and he will deliver to the man he sold it to.
Q. That is it? A. Yes, sir.
Q. Is that the usual way that they close their hedging contracts? A. It frequently happens that way.
Q. Is that the usual way? A. It is not the usual way.
Q. What per cent of them are closed up in some other way?
A. I wouldn't be able to testify on that.
Q. What is the other way that you close them up?
A. Settling.
1199 Q. Ringing them up and paying the difference?
A. Yes, sir.
Q. Isn't that what the exporter calculates to do if he makes a hedging trade?
A. I don't think he always knows what he will do when he makes the trade.
Q. Are you an exporter? A. To a small extent.
Q. When you export the stuff, after you have made a sale of it on the Board, a hedging sale, you calculate to deliver the stuff that you export on that sale, do you?

A. You mean the identical stuff?
Q. Yes sir. A. Certainly not.
Q. Do you expect to buy that stuff in and ring it up?
A. I expect to buy it in, I don't expect to ring it up.
Q. You don't expect to? A. No, sir.
Q. But you know, as a matter of fact, that in 99 cases out of 100 you do ring it up, don't you? A. I don't know that.
Q. You don't know that? A. No, sir.
Q. You do know that in 95 cases out of a hundred you do ring it up? A. I would say in the majority of cases we do.
Q. Could you answer the question just as well?
A. I wouldn't swear to any specific per cent.
Q. Would you swear that in 90 per cent of the cases you ring it up? A. No, I would not.
Q. Would you swear in 85 per cent you ring it up?
Q. Well, I should think that would be a pretty fair average. I will take the chances on swearing to that.
Q. You think the devil won't get hold of you if you swear to that, that in 85 per cent of the cases you settle them by ringing up. That is your honest judgment, is it?
A. I have answered the question.
Q. Well, will you swear that you deliver just as much on hedging contracts as you do on any other contract?
A. Yes, sir.
Q. The miller who buys wheat does he make hedging contracts on the Board of Trade? A. Yes sir.
1200 Q. Does he make a sale of that wheat?
A. He makes a sale sometimes; sometimes he makes a purchase.
Q. What sort of a hedge is it to make a purchase of a commodity that you are going to ship away?
A. He may sell flour for future delivery when he has not the wheat.
Q. I didn't ask you that.
A. I am trying to explain it to you the best way I can.
Q. You needn't explain that. Answer the question. Read it.

(Question read.)

A. It is a protection against the sale of flour by the purchase of the material the flour will be made out of.
Q. Well you find that the flour is shipped, you sell it at a foreign market for less money than it costs you. How do you make anything by that hedge?
A. Well, that involves another explanation, Mr. Jenks.
Q. I want to know how you make money by it?
A. The market for flour and wheat generally fluctuates together. If the flour goes down so that you lost money on your sale of flour, you make it on your sale of wheat, and vice versa.

Q. Having bought the wheat?
A. Well, the same rule applies.
Q. Now, about how much would you make on a hundred thousand bushels of wheat bought at 75 cents a bushel when the price went down to 70 cents?

Mr. Robbins: I object to that.

A. Wouldn't make anything.
Mr. Jenks: Well, aren't you mistaken about buying stuff as a hedge— A. No, sir.
Q. Against stuff that is going to be shipped away?
A. No, sir.
Q. Well, now, a man has got wheat, a miller who intends to grind that up into flour, and he makes a hedge on the Board by selling a like quantity of wheat for future delivery. He manufactures this wheat into flour. How does he deliver the wheat that he manufactures into flour, on his hedging sale made on the Board of Trade?
1201 A. If he has the wheat in the first instance he would not make any hedging sale.
Q. He wouldn't? A. No.
Q. He would make a purchase, wouldn't he?
A. He wouldn't make anything. He would grind his wheat up and sell the flour.
Q. Then when you said that millers who manufactured flour sold the wheat as a hedge on the Board of Trade, that was a mistake, was it? A. No, sir.
Q. It was not? A. No, sir.
Q. Does he sell the wheat as a hedge? A. In some cases.
Q. That is just what I asked you and you said he wouldn't do it.
A. Well, the miller is not bound by any hard and fast rules; he don't always transact his business in the same manner; he may want to keep long on wheat, he may not want to keep long on the market.
Q. Suppose he don't want to, but does want to manufacture the wheat he has got into flour, and he does want to hedge on the Chicago Board of Trade, how does he do it, makes a contract for sale?
A. It depends on whether he wants to keep long the market or short the market.
Q. Suppose he wants to do either one of the two?
A. If he has got 50 thousand cash wheat he sells the flour against, and wants to keep long the fifty thousand wheat, he will keep on grinding the wheat up into flour and will buy a future in the market.
Q. He hasn't sold any flour; it is wheat I am talking about.
A. A miller never deals in wheat short.

Q. Don't he deal in wheat? A. Yes, both of them.

Q. Now, just confine yourself to wheat. The miller has got wheat which he intends to manufacture into flour, and he hedges on the Board of Trade by selling a like quantity of wheat. He manufactures the wheat that he has into flour, ships the flour away and sells it; can he deliver that wheat on his hedging sale made on the Board of Trade? A. No.

1202 Q. How can he get out of that then? A. Buy it in.

Q. Then if he does buy it in, and he don't want the wheat, how does he ring up the deal?

A. He may settle the deal by delivery; he may settle it by off-set.

Q. And ring, and closing through the clearing house?

A. Yes, sir.

Q. And it is the same way with pork packer, isn't it?

A. Exactly.

Q. Does the pork packer usually ship his stuff away from the city of Chicago to sell it? A. I think he does.

Q. Then if he ships his stuff away, he cannot deliver that on a hedging contract, can he? A. No, sir.

Q. Do you know who receives the market reports? A. No.

Mr. Jenks: That is all.

Walter Comstock, recalled on behalf of the defendant, for further examination by Mr. Jenks, testified as follows:

Q. Mr. Comstock, this forenoon you were to look up something or other?

A. Yes, you asked me, Mr. Jenks, what the percentage was of the—

Q. Of the trades that you made in futures on the Board of Trade which resulted in a delivery? A. Yes, you asked me—

Q. What do you find it to be?

A. You asked me if it was any less than 99 per cent.

Q. Yes.

A. Well, it is. It is a little less than that—or a little more than that.

Q. How much?

A. It is between 98 and that.

Q. Covering what period of time?

A. Well, I didn't go back very far. I went back as far as the first of September, that is, in a rough way.

Q. Yes. 98 per cent or about that of your trades on the floor of the exchange room of the Board of Trade of the City of Chicago in futures were rung up through the clearing house, were they? A. I believe that is a fair percentage.

1203 Q. And the differences in the market price, or the purchase and sale price was paid from one party to the other, and they closed up the deals? A. Yes.

Q. And about two per cent of those transactions on the Board resulted in the actual delivery of the commodity?

A. Cash deliveries, yes.

Q. Was that delivery a delivery by warehouse receipt, or was it delivery by notice, as provided for?

A. Well, both, both notice and by warehouse receipt.

Q. What proportion of that two per cent was by notice, and what proportion by actual warehouse receipts and payment?

A. Well, covering that whole period, or only this month?

Q. Covering that whole period or this month, or either?

A. I didn't look at any but this month, so far this month.

Q. Well, I will take that.

A. Well, there has been a little over one-tenth of it in warehouse receipts. Other deliveries were in the regular course of business.

Q. One-tenth of two per cent was by actual delivery and payment for the warehouse receipt?

A. For this month, yes so far.

Q. And the rest, or nine-tenths, was delivered by a notice where the payment was not made? A. Yes, that is right.

Q. And settled by the differences through the clearing house?

A. Yes, sir.

Cross-Examination

By Mr. Robbins:

Q. Your firm is closing up its business and going out of business, is it not? A. Yes, sir, the first of January.

Q. And you have always done a purely speculative business?

A. Well, it has been principally that.

Q. Principally speculative business?

A. We are not shippers and receivers.

Q. And you are the largest firm of that kind on the Board of Trade, are you not?

A. Well, I wouldn't like to say that. I will say we
1204 are one of the largest. I don't know that we are the largest.

Q. In your direct examination, in speaking of taking property in and paying for it, you said if the customers had money enough to pay for it; you mean if customers had money enough for you to pay for it?

A. Yes, I said there was some; it is not in all cases.

Q. The expression is what I asked you about. A. Yes, sir.

Q. Do you personally have anything to do with the ringing in your office? A. No, not personally; the clerks do that.

Q. And there is a rule of the Board of Trade governing in that? A. Yes, sir.

Q. And you do that business in that way? A. Yes, sir.
Q. So far as you know? A. Yes, sir, so far as I know.
Q. And that is also true of this closing up notice, is it?
A. Yes, sir.
Q. Delivery notice? A. Yes, sir.
Q. When he says he has the same notice? A. Yes, sir.
Q. What would happen on the Board of Trade if your trades, if they were not closed by the agreement of parties who join in these rings, if it was not settled by rings—in other words, how would the contract be settled, those that you have named, on the floor of the exchange?
A. How would they be settled?
Q. Yes, how would they be closed out? Suppose you stood on your contracts and did not settle them?
A. Until the maturity of the contract?
Q. Yes.
A. I don't see how anybody could have money to do that, if they did any kind of business.
Q. Well, in the trades of the character that you made?
A. I don't know what would happen.
Q. Would you get the property? A. Oh, certainly.
Q. That is what I mean.

Mr. Jenks: Would you get the property in all those trades?

Mr. Robbins: Q. Do you make hedges for elevator people in Chicago?
1205 A. Why, there are elevator people that do business with us on the Chicago market.
Q. Sell for future delivery in the wheat pit? A. Yes.
Q. And you deliver property for them on those contracts?
A. Yes.
Q. In large quantities, do you not?
A. Well, I believe we have, yes, as I remember it.
Q. I mean by elevator people, owners of grain elevators?
A. Yes.
Q. Do you have such contracts for future delivery for the provision houses, packers of this city? A. Yes.
Q. Made large numbers of trades for them in the way of sales for future delivery, have you not?
A. Well, we have done quite a business in that line at times.
Q. Have you delivered property on those trades? A. Yes.
Q. In large quantities?
A. Well, I don't know what you would consider large, but I would say fairly good sized contracts.
Q. Is there any way to judge, from the manner in which these trades are made in the pit, at the time they are made,

whether the contracts that are made there will be closed by deliveries or not?

A. No, I don't think there is any way. You don't know what your customer is going to do.

Q. All the trades are made by the use of about the same language, and the same kind of signs? A. Yes sir.

Q. And no one standing in the pit there could distinguish one class of those trades from another, could they?

A. No, sir.

Q. Whether they are made by way of hedge against property actually in the possession of the party making the trade or whether they were made [or whether they were made there] with the desire to speculate?

A. I don't see how it would be possible to tell.

Q. And no way to distinguish the quotations arising from one class of transactions from those arising from any other?

A. I don't believe there is any way.

1206 Re-redirect Examination

By Mr. Jenks:

Q. Mr. Comstock, if you cannot tell what the customer intends to do when you make a trade for him on the floor, let me ask you if you have not had a man as a customer for years who had thousands of deals on the Board and had never receive or deliver a pound of stuff that he dealt in? You have had such customers, haven't you?

A. I don't know. We may have had, Mr. Jenks. I presume we have.

Q. And if you had such a customer who had been with you for years and had a lot of transactions, and never did receive or deliver anything, would that be any indication to you as to whether he intended to receive or deliver anything?

A. Well, he might the next time.

Q. Oh, he might, but it would be pretty good guessing?

A. That is as close as I can come to it.

Q. It would be pretty good guessing that he didn't want it, he merely wanted the money that was in it, wouldn't it?

A. Well, I have had them trade for quite a while, and then finally take in cash stuff.

Q. Yes, but it was because they got stuck, wasn't it?

A. No, sir.

Q. Because they couldn't get out?

A. No, they may have thought it would go to a premium and would want to hold it.

Q. But as a rule, where they don't take anything, it is pretty good guessing that they don't want it?

A. If they don't take anything, yes.

Q. Mr. Robbins asked you what would happen if the trades were not rung up before delivery day, and he finally wrung out of you a statement that the stuff would be delivered. Now, I want to ask you right in that line, suppose none of the stuff that your firm alone deals in was rung up and settled before delivery day, I will ask what would happen, as to whether there would be stuff enough in the country to fill all of those contracts, or money enough in the country to pay for it.

1207 Mr Robbins: Objected to as calling for the witness' opinion.

A. I am not an authority on that.

Mr. Jenks: Why? A. I am not an authority for it.

Q. Are you a good guesser on that subject?

A. Well, I will answer that question in this way, Mr. Jenks, that if it was not rung up in the mean time, there would be a great quantity of stuff to take in for one house to deliver out for another; there would be a great volume of trade there to settle up.

Q. I know it. But suppose just your little house alone had to take in all that stuff which you had traded in for that delivery, would there be stuff enough to fill those orders, just one house, your own?

A. Well, if in the mean time it had been sold, it would go to somebody else, whatever would be done,

Q. No, that is not what I asked you. If none of your contracts were settled that you had bought, nothing was settled, you would have a right then to expect a delivery. Now, if all of your contracts that had been made for December delivery say, were in force on the 2nd day of December, and if all that stuff had been delivered to you, would there be money enough in the country to pay for it?

A. Yes, there would be money enough in the country to pay for it, but I wouldn't have enough.

Q. There wouldn't be grain enough in the country to fill the orders, would there? A. I don't know about that.

Q. You haven't figured up an estimate for what you said you dealt in every day? A. No.

Q. You deal in every day how much, in all of the grain?

Mr. Robbins: I object. He has gone into that.

Mr. Jenks: Q. Three million bushels a day. Now, take the 90 days—

A. I don't know how much there is in the country.

Mr. Jenks: Well, he don't know. That is all.

1208 Samuel Powell, a witness on behalf of the defendant, recalled or further cross-examination by Mr. Robbins, testified as follows:

Q. Under this system of delivery provided by the rules of the Board of Trade, I will ask you whether the difference between the delivery price of the day and the contract price passed through the clearing house, as well as the settlement of future contracts before the month of delivery? A. Yes, sir.

Lyman L. Kellogg, a witness produced on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Jenks, and testified as follows:

Q. Will you state your full name? A. Lyman L Kellogg.
Q. Where do you live? A. Chicago.
Q. How long have you lived in Chicago?
A. About twenty years.
Q. What is your business? A. I am on the Board.
Q. Board of Trade of the City of Chicago? A. Yes, sir.
Q. How long have you been there?
A. About twenty years.
Q. What do you do there?
A. Oh, I speculate, trade, used to be in the receiving business and shipping business.
Q. What do you do now, and how long since you were in the receiving business and shipping business?
A. Since I dropped that I am scalping.
Q. How long since you have dropped that?
A. About ten years ago.
Q. How long have you been a scalper?
A. About ten years.
Q. What is a scalper as known on the Chicago Board of Trade? A. Well, he buys and sells grain for a small profit.
Q. For future delivery? A. Yes, sir.
Q. In what quantities have you dealt on the floor of the exchange room of the Board of Trade in futures?
A. Well, rather small quantity.
1209 Q. For the past ten years?
A. Yes, sir, part of the time.
Q. How much would they average per day, month or year, your dealings there?
A. Well, my trades would not amount to a great deal.
Q. About how much, they amount to something, don't they?
A. Some days I trade in fifty or seventy-five thousand, and some days I don't trade in five.
Q. Well, on an average how much a day?
A. I never figured up.
Q. Give us the best estimate you can?
A. Well, when I was trading regular perhaps I averaged 50 thousand a day.
Q. When was that? A. Well, from '91 until about 1900.
Q. How were those trades settled and closed out?

A. Under the rules of the Board.
Q. How? A. Well, by ringing mostly.
Q. Did you ever receive or deliver anything? A. Yes, sir.
Q. What proportions of the amounts dealt in did you receive or deliver since you were a scalper?
A. I never kept track of that.
Q. About what proportion?
A. Perhaps one or two per cent.
Q. Not more than that resulting in deliveries?
A. I should not think so.
Q. All the rest were rung up and settled through the clearing house by paying the difference in the purchase and sale price, or market value? A. Yes, sir.
Q. Do you know of such a thing as transfer trades on the floor of the exchange room of the Board? A. Yes, sir.
Q. What are transfer trades?
A. Well, if I buy ten thousand bushels of wheat in the pit of one party and the market goes against me, or at least I see it is going against me, and I have a chance to sell it out to another party at the same price, I transfer it.
Q. Transfer it, how?
A. I go to this party I transfer it to, and go to the party I bought it of. That lets me out of the transfer; that lets me out of the trade.
1210 Q. Have you previous to that put down those two transactions on your trading card?
A. They would be on my trading card, yes, sir.
Q. And what would you do with them on the trading card?
A. I would make a memorandum on the trading card of the name I transferred it to and scratch it off.
Q. And it would go no further on your book?
A. No, sir, that would not go on the books at all; it would simply be on the card.
Q. And what would you gain by making that transfer trade?
A. Nothing, except I would save the commission and save the tax.
Q. Save the revenue tax? A. Yes, sir.
Q. Well, if you transfer the trade, you would merely scratch that trade off from your card?
A. Scratch it off from the card, yes sir.

Mr. Jenks: That is all.

And thereupon, at 4:40 o'clock P. M. December 6th, 1901, an adjournment was taken until 10 A. M. the following day, December 7, 1901.

December 7th, 1901. 10 o'clock A. M.
Parties met pursuant to adjournment.

Louis K. Whitcomb, a witness called on behalf of the defendants, having been first duly sworn, and being examined in chief by Mr. Jenks, and testified as follows:

Q. Mr. Witness, will you state your full name?
A. Louis K. Whitcomb.
Q. Where do you live? A. In Chicago.
Q. How long have you lived in Chicago?
A. Between 28 and 29 years.
Q. What is your business? A. Telegraph operator.
Q. With what institution?
A. The Western Union Telegraph Company.
Q. How long have you been there?
A. Between 28 and 29 years.
Q. Can you give us exactly how long you have been there?
A. Yes, sir, since March 6th, 1873.
1211 Q. Do you know anything about the Western Union Telegraph Company sending [our] market reports from the Chicago Board of Trade? A. Yes, sir.
Q. Can you tell us when that company commenced to send out market reports from the Chicago Board of Trade?
A. No, sir.
Q. Was it before your time there?
A. Well, I found them sending reports when I went to work for the company in Chicago.
Q. In 1873? A. In 1873.
Q. They had been, previous to that time, sending out market reports from the Chicago Board of Trade?
A. Not to my knowledge.
Q. Well, from examination that you have made?
A. I found the custom anyway when I came here.
Q. That is, when you went there, you found that they were sending out market reports from the Chicago Board of Trade?
A. Yes, sir.
Q. But whether they sent them previous to the time you went there, you do not know? A. No, sir, I do not.
Q. When you went there, who were gathering the market reports on the floor of the Exchange Room of the Board?
A. I don't know.
Q. I don't mean the individuals.
A. I know. The Company, I presume.
Q. The Western Union Telegraph Company? How long did the Western Union Telegraph Company continue to gather and send out the market reports from the Board of Trade of the City of Chicago?
A. Well, as far as I can remember, continuously, with the exception of one interruption last year.
Q. Down to what time? A. August, 1900.
Q. 1900, that is it?

A. 1900. I cannot testify that it was continuous service all the time; generally.

Q. But it was substantially continuous all the time, was it not? A. Yes, sir.

Q. With some interruptions periodically?

A. To the best of my knowledge, yes, sir.

1212 Q. What portions of the country were those continuous market reports sent over?

A. Why, as far as I know, they were sent broadcast. I could not name any one portion.

Q. Were those reports sent over the wires of that Company?

A. Yes, sir.

Q. From the time the reports left the floor of the Exchange Room of the Board of Trade until they were received at different places over the country, when they were sent out, what length of time would elapse?

A. Why, it was practically simultaneous service.

Q. That is to say the reports of the market would be received in distant places practically at the same time they were sent from here? A. Practically so, yes.

Q. To how many different people were those reports sent from 1873 down to 1900 by that Telegraph Company?

A. I can't answer that.

Q. I don't expect you to state exactly, but what I want to get at is, whether there were numerous people, or only very few?

A. Well, I should say there were numerous people. May I correct one answer that I made as to my position with the company, and so on?

Q. What is it?

A. I said I was telegraph operator. That is my business, but I am the chief operator of the Western Union Telegraph Company.

Q. That is, you have charge of many operators?

A. Of the Chicago operating room.

Q. How long have you been?

A. One year. I have been in an official position twenty-five years though.

Q. What have they been called, the different positions that you have held there; what have they been called?

A. Division chief, in charge of a section of the office; traffic chief in charge of the movement of traffic of the office, assistant chief operator, and my present position.

Q. In what manner were the market reports recorded at the other end of the line after being sent out from Chi-

1213 cago? A. I could not answer that.

Q. Can you tell by what kind of instrument, telegraphic instruments?

A. I presume they were received by the Morse telegraph instrument; I don't know of any other way.

Q. Do you know whether those market reports by the Western Union Telegraph Company were distributed through the city of Chicago during the time that you have mentioned?

A. No, sir.

Q. Do you know about ticker instruments?

A. Only in a general way.

Q. Do you know whether these market reports were sent around the circuit in the city of Chicago to ticker instruments?

A. I have seen them sent from the ticker transmitting instrument, but I don't know their destination.

Q. What is the object of the ticker transmitting instrument?

A. To send market reports or any other reports.

Q. What sort of instrument is the ticker transmitting instrument?

A. It is an electrical instrument that sends out characters and is generally manipulated by a key-board, something similar to a piano keyboard.

Q. Can you describe that instrument and how it is operated different from the Morse instrument?

A. Well, the characters are transmitted mechanically on the ticker instrument, while in the case of the Morse instrument, the characters are transmitted by hand.

Mr. Robbins: You will have to speak a little louder. I cannot hear you.

A. All right, I will try to.

Mr. Jenks: Q. In the ticker transmitting instrument, is that operated something like a typewriter, an ordinary typewriter, where by striking the key, the type is set on the paper?

A. Yes sir, although the mechanism is altogether different.

Q. Yes, but the idea is about the same. The char-
1214 acters are transmitted and they appear at the other end of the line through the ticker just as they are made by the transmitter instrument? A. Yes, sir.

Q. The transmitter ticker instrument that you have seen the market reports being sent out over, was located where, with reference to the office of the Western Union?

A. In the office of the Gold & Stock Department or quotation department, as they call it.

Q. The Gold & Stock Department, you say. Who owned the ticker instruments?

A. I cannot answer that definitely. I presume the Western Union Telegraph Company.

Q. Were they under the control of the Western Union Telegraph Company? A. Yes, sir.

Q. Do they remain so to the present time?

A. To the best of my knowledge, yes, sir.

Mr. Robbins: Why, Mr. Jenks, you don't want the witness to state that?

Mr. Jenks: What?

Mr. Robbins: That the tickers are under the control of the Western Union?

Mr. Jenks: Aren't they?

Mr. Robbins: He knows they are not, only those that they have. Have you got an idea that the Western Union controls all the tickers?

Mr. Jenks: The Gold & Stock Telegraph Company, isn't that so.

Mr. Robbins: Of the Gold & Stock Company, yes, if you are confining it to that.

Mr. Jenks: That is what I am after.

Mr. Robbins: Your answer avers that they had a patent on the ticker of the Gold & Stock Company, implying that they were the exclusive ticker people, but that is not so any longer.

Mr. Jenks: They are the exclusive ticker people of their own tickers, ain't they?

Mr. Robbins: Oh, yes, that is true.

1215 Mr. Jenks: As I understand you have got some new fangled ticker since then that operates by somebody else?

Mr. Robbins: There are lots of tickers now.

Mr. Jenks: Q. Does the Western Union Telegraph Company, and has it since 1873, sent out market reports to people who paid for them?

A. I can't answer that question. I am not in a position—I am not in the department where the collections are made and I don't know.

Q. Can you say as to whether they send them out and distribute them generally to all people who wanted them and who would pay for them?

A. No, sir, I cannot answer that either. I know they were distributed generally, as far as my knowledge goes.

Q. But as to the payment for them that you don't know about? A. I have not anything to do with that, no sir.

Q. During his year, will you state whether you have been sending out and distributing through the country the same kind of market reports and about the same way that they have been sent out ever since 1873? A. Yes sir.

Q. Do you know—

A. (Interrupting.) I would like to qualify that answer. Yes sir, the same character of quotations as far as I know.

Q. And in about the same way that they always have?

A. The same manner of transmission, yes sir.

Q. Do you know whether the Postal Telegraph Cable Company has also been sending out market reports? A. No sir.

Q. You don't know anything about that? A. No sir.
Q. Who is the superintendent in Chicago of the Western Union Telegraph Company? A. F. H. Tubbs.
Q. Where is he? A. 138 Jackson Street.
Q. Is he in the city now? A. Yes sir.
Q. Who is the manager? A. E. M. Mulford, Junior.
Q. What does Colonel Clowry have to do with it?
1216 A. He is the general superintendent.
Q. The general superintendent? A. Yes sir.
Q. Well, he is the man I want. Where is he?
A. He is traveling in the West somewhere. I cannot tell you just exactly where, Washington territory.
Q. Do you know when he is expected home?

Mr. Jenks: Mr. Robbins, upon the question of the length of time that those market reports have been sent out by the Western Union, will you stipulate that they were sent out before 1873, to avoid the necessity of bringing in some more witnesses?

Mr. Robbins: No, but I will enter into a general stipulation as to the exact condition of things since 1870, with respect to quotations and their collection and distribution as known to everyone connected with the matter.

Mr. Jenks: Take the witness.

Cross-Examination

By Mr. Robbins:

Q. You don't know what the arrangements between the Board of Trade and your Telegraph Company were at any time with respect to those quotations, do you? A. No, sir.
Q. You don't know whether they were distributed indiscriminately or whether they were distributed under restrictions, do you? A. No sir.
Q. Don't you know that between early in 1890 and about May, 1892, the Western Union did not receive quotations from the Board of Trade or distribute them?

Mr. Jenks: Wait a minute. Will you read that question.
(Question read.)

A. I can't remember.
Mr. Robbins: Q. Do you remember that there was a time along there that no quotations were sent out?
A. I have an indistinct recollection, but I cannot swear to it.
1217 Q. Well, don't you know that between August 1st, 1900, and April 1st, 1901, the Western Union did not receive or distribute these quotations to anybody?
A. Yes sir. Through my office.

Q. Yes. Do you undertake to say that between 1883 and 1889 there was not a period during which the Western Union did not gather the quotations? A. No sir.

Q. You don't know who gathered them during those years, do you? A. No sir.

Q. You simply know that the Western Union had them for distribution and that they went out through your department?

A. Yes sir.

Q. The Western Union runs its quotation service in the name of the Gold and Stock Telegraph Company, don't it?

A. Yes sir.

It is stipulated and agreed that the Statute of the State of Illinois, known as the Criminal Code, and relating to gambling and gambling contracts, and especially sections 130, 131, 132, 137a, 137b, 137c, and 137d, of the Revised Statutes of the State by Hurd 1899, may be read either in evidence or in any way in this case upon the trial of it, or at any other time when thought necessary or proper.

Mr. Jenks: I want to add to that Criminal Law that we have a right to read in there from the Statute of the State of Illinois, Article 10 of the Constitution of 1848 of the State of Illinois, which was in force at the time the Board of Trade of the City of Chicago was incorporated. Section 1 of Article 10, relating to corporations as follows:

"Corporations, not possessing banking powers or privileges may be formed under general laws, but shall not be created by special acts, except for municipal purposes, and in cases where, in the judgment of the General Assembly, the objects of the corporation cannot be attained under general laws."

1218 Henry Behl, a witness called on behalf of the defendants, was first duly sworn, and examined in chief by Mr. Jenks, and testified as follows:

Q. Will you state your name? A. Henry Behl.

Q. Where do you live, Mr. Behl?

A. 117 Lunt Avenue, Rodgers Park.

Q. In Cook County, Illinois? A. Yes, sir.

Q. How long have you lived in Cook County?

A. Since April 11th, 1870.

Q. What is your business? A. At present?

Q. Yes? A. I am paymaster of the company.

Q. What company?

A. The Western Union Telegraph Company.

Q. How long have you been connected with the Western Union Telegraph Company in any capacity?

A. In all capacities since April 1870.

Q. Do you know how long the Western Union Telegraph Company has been sending out over its wires and through the country continuous market reports from the Board of Trade of the City of Chicago?

A. They were at that time distributing market reports, what they call the C. N. D. reports. I presume they were the market reports or quotations.

Q. Have you finished your answer?

A. Well, they were at that time sending out C. N. D. reports.

Q. C. N. D.? A. Yes sir.

Q. Commercial News Dispatches? A. Yes sir

Q. And what they then called the C. N. D. Reports as relating to the Board of Trade of the City of Chicago were what are now known as the continuous market reports, were they not?

A. That I cannot say positively. I do not remember whether they were the Chicago Board of Trade market quotations, or whether they were called quotations from New York. I am not positive as to that.

Q. And you don't know whether there were both?

A. I do not.

1219 Q. And that covers what time? A. Ever since.

Q. Ever since then? A. Yes sir.

Q. Have they called them C. N. D. Reports ever since then?

A. They call some of them C. N. D.'s now, yes sir.

Q. Do you know whether now they send out the market reports from the Board of Trade of the City of Chicago?

A. I have every reason to believe so.

Q. And how long have they been sending out those market reports to your knowledge? A. Throughout the country?

Q. Yes? A. Well, I cannot say positively.

Q. Well, about how long, to your knowledge?

A. Well, the last eight years, I should judge.

Q. Do you know whether the Western Union Telegraph Company receives pay for distributing those reports to different people? A. I do not positively, no sir.

Q. Do you know anybody in your office who can testify back at the time that the Western Union was sending out market reports from the Board of Trade of Chicago, before the year 1870?

A. There are very few of them connected with the office now that were in the service at that time, but perhaps —

Q. Do you know anybody?

A. Perhaps our chief book-keeper can testify.

Q. Do you know how long he has been there?

A. He was in the service when I came there.

Q. What is his name? A. R. W. Chapman.

Cross-Examination

By Mr. Robbins:

Q. There is a distinction between C. N. D. quotations and continuous quotations now, is there not? A. I couldn't say.

Q. Don't you know that the C. N. D. quotations are the quotations that go out at certain stated periods during the market hours? A. I don't know.

1220 Q. Well, you don't know what kind of quotations they were sending out in 1870?

A. They called them C. N. D.

Q. Except they were called then C. N. D. quotations?

A. Yes sir.

Q. And your knowledge goes back eight years; you know that for eight years they were sending out the quotations of the Chicago Board of Trade? A. I don't know that.

Q. What?

A. I don't know positively whether they did or not.

Q. You didn't hear of the controversy between the Board of Trade and the Western Union Telegraph Company about quotations? A. I heard something of that, yes sir.

Q. You didn't know that that controversy involved the taking of the quotations away from the Western Union by the Board of Trade?

A. I think I understood the matter that way, yes sir.

Q. Then you don't know whether the quotations were sent out from August 1st, 1900, to April 1st, 1901, or not, do you?

A. I couldn't say positively.

Redirect Examination

By Mr. Jenks:

Do you know this, that the wire over which continuous market reports are and have been sent, is called the C. N. D. wire? A. That I do not.

Charles C. Christie was recalled as a witness on behalf of the defendant and being further examined in chief by Mr. Jenks, testified as follows:

Q. Mr. Christie, do you know what the wire is called over which the Western Union Telegraph Company has been sending out the market reports for a great many years last past?

A. Yes sir.

Q. What is it called?

A. The C. N. D. Wire, so denominated by the Telegraph Company in their—

Q. Well, that is all I want. The C. N. D. Wire?

A. Yes sir.

1221 Mr. Robbins: Q. Do you know what C. N. D. stands for?

Mr. Jenks: Wait a minute.

Mr. Robbins: All right.

Mr. Jenks: Q. Since you have known of the Western Union Telegraph Company sending out continuous market reports of the Board of Trade of the city of Chicago, will you state whether those reports have ever been called Commercial News Dispatches?

A. Yes sir; that is what I understand they are called now. This abbreviation stands for that.

Q. C. N. D.? A. Yes sir.

Q. And included in that, the C. N. D. Dispatches, are the continuous market reports from the Board of Trade of the city of Chicago?

A. Yes sir. The only other news that is sent under that heading is the market news of other markets relating to grain. For instance, the receipts in the north west, the export business; and that class of news comes on the C. N. D. wire. Nothing else except Chicago quotations and that kind of news.

Q. Don't news from the Stock Exchange in New York come over that wire?

A. No sir. That is another wire, which they call the stock wire. The Chicago quotations are not sent continuously over the wire that carries the New York stock quotations. That is a separate wire and known under a different name.

Q. Mr. Christie, did I ask you when you were on the stand before whether the continuous market reports from the Board of Trade of the City of Chicago have been posted on blackboards and otherwise in different parts of the country ever since you have known about those market reports?

A. I don't remember whether you asked me or not.

Q. What is the fact about it?

A. The fact is that these reports have been spread on the blackboards all over the country, ever since I have had anything to do with the grain business, all over the United States.

Q. And continuing down to what time?

1222 [Q.] Well there never has been a break in it. There never has been a time since I have been in the business that the Chicago market reports were not posted on blackboards all over the country.

Q. And that covers how much time? A. 20 years.

Q. Did the Western Union Telegraph Company, down to last year, deliver those market reports to anybody who wanted them and would pay for them?

A. Yes sir, with two breaks in it, during the time that I had been in the grain business. Back in 1883 I think it was, and again in 1890 to 1892, perhaps. That did not, however, stop the publication of the reports.

Q. They were sent out by some means and posted just the same, were they?

A. Yes sir. From 1890 to 1892, I was connected with Counselman & Day during that period, and they sent them to me over their own private wire.

Q. And were they posted by you? A. Yes sir.

Q. So that the continuous market reports had been sent out in some shape for at least twenty years and posted by different people? A. Yes sir.

No cross-examination.

Whereupon Counsel for defendants offered in evidence the articles of incorporation of the Cleveland Telegraph Company, or a certified copy thereof, certified to by the Secretary of the State of West Virginia.

To which offer, counsel for complainant objected as irrelevant.

The objection was overruled by the Master.

It was agreed that the original be withdrawn and a copy inserted.

The said document was admitted in evidence and is in the following words and figures, to wit:

1223

State of West Virginia.
Certificate of Incorporation.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that an Agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of

Cleveland Telegraph Company.

For the purpose of conducting the business of constructing and operating, leasing, controlling and using for profit telegraph and telephone wires, instruments and appliances, for the transmission of messages [and for the transmission of messages] and for the transmission and sale of news of all kinds from place to place, or to different points in the same city, towns, and places, and generally, to do a general telegraph and telephone business throughout the United States.

Which corporation shall keep its principal office or place of business at the city of Cleveland, County of Cuyhega, and State of Ohio, and is to expire on the first day of April, 1950.

And for the purpose of forming said corporation, we have subscribed the sum of $2000 to the capital stock thereof, and have paid on said subscription the sum of $200. and desire the privilege of increasing the capital stock by the sale of additional shares from time to time to $500,000 in all. The capital stock so subscribed is divided into shares of $100. each, which are held by the undersigned respectively, as follows, that is to say:

Names.	Residence.	No. of shares.
Geo. B. Salders	Cleveland, Ohio,	4
D. H. Tilden	"	4
Allen A. Odell	"	4
Chas. B. Salders	"	4
Harry E. Orr	"	4

1224 And the capital stock to be hereafter sold is to be divided into shares of like amount.

Given under our hands this 3rd day of May, 1900.

GEO. B. SALDERS.
D. H. TILDEN.
ALLEN A. ODELL.
CHAS. B. SOLDERS.
HARRY E. ORR.

Whereore, The corporators named in the said Agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the first day of April Ninteen Hundred Fifty a Corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this Fifth day of May, Nineteen Hundred.

[Seal] (Signed) WM. M. O. DAWSON,
Secretary of State.

(Testimonial.)

Offices of Secretary of State, to wit:

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, hereby certify that the foregoing writing dated the Fifth day of May Nineteen Hundred and .... is a true and correct copy of the Certificate of Incorporation of

Cleveland Telegraph Company

a corporation created and formed under the laws of said State, as appears from the records of Corporation in my said office.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this Twenty-ninth day of November Nineteen Hundred and One.

[Seal] (Signed) WM. M. O. DAWSON,
1225 Secretary of State.

On the back of the said document last above admitted in evidence are the following words and figures to wit:

The State of West Virginia.
Certified copy of
Certificate of Incorporation
of
Cleveland Telegraph Company
..... Company
Original Dated May 6, 1900.

An adjournment was here taken until 10 o'clock A. M. Monday, December 9th, 1901.

10 o'clock A. M. December 9, 1901.

Parties met pursuant to adjournment.

And thereupon the solicitors for the respective parties hereto appeared, but no witnesses appeared, and an adjournment was taken until 2 o'clock p. m. on the same day, December 9, 1901.

2 o'clock p. m. December 9, 1901.

Parties met pursuant to adjournment.

And thereupon solicitors for the respective parties were present, but no witness appeared, and thereupon, an adjournment was taken until 10 o'clock a. m. December 10, 1901.

December 10th, 1901. Ten o'clock A. M.

Parties met pursuant to adjournment.

Edward P. Whitford, a witness produced on behalf of the defendant, having been first duly sworn and examined in chief by Mr. Jenks, testified as follows:

1226 Q. Mr. Whitford, will you state your full name?
A. Edward P. Whitford.
Q. Where do you live? A. 8 Chestnut Place.
Q. In Chicago? A. Chicago.
Q. How long have you lived in Chicago?
A. Oh, thirty odd years.
Q. What is your business? A. Telegraph operator.
Q. Were you ever employed in any capacity by the Western Union Telegraph Company, in Chicago? A. Yes sir.
Q. When first? A. 1868.
Q. How long did you remain with that Company?
A. Until 1884.
Q. Do you know anything about the market reports that have been sent out from the Board of Trade of the City of Chicago? A. Why, yes, I know about them.

Q. Can you state when the Western Union Telegraph Company first commenced to send out continuous market reports from the Board of Trade?

A. It was in the neighborhood—it was early in the '70's, I cannot remember the date; I will tell you about the market reports, as a Company, I think they commenced then. They used to handle the market reports for outsiders, but I do not think they took hold of it as a Company until after about the time Edison completed his ticker. I cannot remember about it definitely, it was early in the 70's.

Q. And how long to your knowledge did the Western Union Telegraph Company continue to send out market reports, the continuous market reports from the Board of Trade of the city of Chicago?

A. I don't think they have ever stopped. They have been ordered to stop, but by injunction have continued, through the influence of injunctions.

Q. Have you anything to do with that department, the market report department? A. For the Western Union?

Q. Yes? A. No sir.

1227

Cross-Examination

By Mr. Robbins:

Q. What did you do when you first went to work for the Western Union? A. Telegraph operator.

Q. Telegraph operator? A. Yes sir.

Q. Where? A. Washington and—Lake and Clark Streets.

Q. Lake and Clark Streets. Where was the Board of Trade then? A. Washington and LaSalle.

Q. How far from your office? A. Two blocks.

Q. How long did you continue to work at Lake and Clark Streets? A. I think we moved over to the corner—

Q. You, particularly, I mean?

A. Yes; Oh, a year or two.

Q. Did you work there until the fire?

A. Not at the corner of Lake and Clark. We moved previous to the fire.

Q. Where did you move to?

A. To the corner of Washington and LaSalle, northwest corner.

Q. And how long did you work at the corner of Washington and LaSalle? A. Well, up to the spring of '71.

Q. And what did you do for the Western Union Telegraph Company after that? A. I was traffic chief.

Q. Traffic chief? A. Yes sir. Then afterwards—

Q. Wait a minute. Traffic chief, what did that consist in?

A. It consisted in routing the messages.

Q. Routing the messages?
A. Yes, seeing that the business was facilitated.
Q. And where did you work in that department?
A. That was at the corner of Washington and LaSalle, southwest corner under Col. Wilson.
Q. Your work was confined to that building, was it?
A. Yes sir.
Q. And how long did you work in that department?
A. Five years?
Q. To when? A. 1881.
Q. What did you do the rest of the time between 1881 and the fire, 1871?
A. I was manager of the Western Union Office on the Board of Trade—Oh, from '81?
1228 Q. From '71 to '81? A. From '71 to '81?
Q. Yes, other than the time you have already accounted for?
A. Oh, there was an interim—of about three years that I went south. I went south on account of my health the spring of the fire. Then I returned and worked for the Atlantic and Pacific a year or two, then went back to the Western Union. I neglected to mention that in the first place; not continuously.
Q. So that prior to 1881, you did not work at all in the Board of Trade Building, or upon the Exchange of the Board of Trade?
A. Occasionally; I was detailed there frequently as an operator.
Q. As an operator? A. Yes sir.
Q. In sending messages? A. Yes sir.
Q. But except as occasionally detailed there, your work did not take you to the Board of Trade at all, did it?
A. No sir.
Q. Did you have anything to do with making any contracts or arrangements between the Board of Trade and The Telegraph Company with reference to quotations during that period? A. Prior to 1881?
Q. Yes? A. No sir.
Q. Did you have anything to do personally with sending out any quotations prior to 1881? A. No, sir.
Q. I mean by personally, did you personally as an employe of the Western Union Telegraph Company, have anything to do with sending out the quotations prior to that?
A. Only to facilitate them as traffic chief. I didn't make them up, or anything of that kind.
Q. But under what terms they were furnished by the Board of Trade to the Western Union Telegraph Company, you don't know? A. I don't know, no sir.

Q. And to what extent they were distributed, you don't know? A. No sir.

Q. You don't know whether they went to everybody or only to certain designated parties?

A. I do not, no sir, not of my own knowledge.

1229 Q. Do you know the firm of More Brothers, that had something to do with quotations in the '70's?

A. Yes sir.

Q. What? A. Yes sir.

Q. Don't you know that they were the persons who sent out the quotations in the '70's? A. Yes sir.

Q. They were the only persons who sent out the quotations in the '70's, were they not, except when they were sent out by private message by a member of the Board of Trade to his customer?

A. Yes, I believe they were the only authorized agents. That is the best of my knowledge.

Q. During the '70's? A. Yes sir.

Q. The Western Union were not authorized to collect or send the quotations during the '70's at all?

A. I cannot remember whether they were agents of the Western Union or not; my impression is that they were.

Q. That the Morse Brothers were?

A. Yes sir, I know they furnished them office room next to the operating room, more or less intimately connected; I don't know of my own knowledge, sir.

Q. Well, how long did the Morse Brothers have an office adjoining the Western Union Office?

A. I cannot remember the dates.

Q. Do you remember what years it was in?

A. Well, they were there up to the time of the fire, to my knowledge, I recall that.

Q. Do you remember where those Morse Brothers are now?

A. No sir.

Q. What—When did you last see them?

A. They have been dead some years.

Q. Both of them?

A. I think they are; I am quite sure they are.

Q. Now isn't it a fact that those Morse Brothers were engaged in the private enterprise of sending out those quotations and used the Western Union Telegraph Company to send the messages for them?

A. I couldn't state definitely, no sir.

Q. Do you know that that is not so? A. No, sir.

1230 Q. As a matter of fact, the Western Union Telegraph Company did receive messages containing quotations from those people, Morse Brothers?

A. It handled them. Morse Brothers compiled them.

Q. Who paid for their transmission?

A. That is really something I cannot say, sir; I was not posted as to the keeping of the account.

Q. Don't you know that the Morse Brothers did not send those quotations generally, but only sent them to persons that made arrangements with them for that purpose?

A. Well, I couldn't state definitely as to that. I couldn't swear to it.

Q. What is your recollection? A. My opinion is—

Mr. Jenks: He says he cannot swear to it.

Mr. Robbins: Q. What is your recollection?

A. My recollection is that the reports came in signed, "Morse Brothers" and we rushed them, we had to.

Q. How long did they continue, up to 1881?

A. I cannot remember whether the Morse Brothers were personally interested in that up to that time or not. I don't remember when they went out.

Q. But during the time that the Morse Brothers were sending out quotations, they were the only ones that sent them out, where they not? A. To the best of my knowledge.

Q. And those quotations came to the Western Union in messages signed "Morse Brothers" and the instructions of the Western Union were to rush those messages?

A. That is my impression, my recollection.

Q. Do you know of any concern known as "The Board of Trade Leased Lines" after 1876? A. Yes.

Q. Now the Western Union had nothing to do with that concern, had it, so far as you know?

A. No sir, I couldn't swear as to whether they did or not.

Q. Now, didn't Morse Brothers send out the quotations over those Board of Trade Leased Lines for a while, instead of the Western Union Telegraph Company's lines?

1231 A. I cannot recollect as to that; I cannot remember who did the quotation business. It seems to me that some of Morse Brothers stuff went over the Western Union and some over the Board of Trade lines.

Q. But it was all in the nature of private messages?

A. Yes.

Q. To their customers? A. Yes, to all intents.

Q. The Western Union itself was not at that time in the quotations business in the way that it is now? A. No.

Q. As a matter of fact, were the continuous quotations sent out at that time at all in the way they are now?

A. They were not sent out so often.

Q. That is to say, every change in the market was not sent out at that time as it is now? A. No, sir.

Q. There was no telegraph instrument in the wheat pit or on the floor of the Exchange Room? A. No, sir.

Q. Devoted, as now, to the exclusive transmission of quotations? A. No, sir.

Q. There were no employes of any Telegraph Company or the Board of Trade, whose duty it was, as now, to collect the quotations on every change of quotation in the different pits and take them to the operator for transmission? A. Yes.

Q. What? A. Yes.

Q. Yes, what? A. Yes, sir.

Q. When did that begin?

A. I cannot remember. The Western Union had employes in the pits, had reporters, had boys running to their office.

Q. That was from 1881 to 1884?

A. I cannot remember the dates, up to 1884.

Q. Did you have charge— A. Up to 1884.

Q. And after 1881? A. Yes.

Q. It was between the year 1881 and 1884, was it?

A. It commenced before 1881, I believe, I am not positive; it continued to 1884; I don't remember.

1232 Q. Did you have charge of that? A. No, sir.

Q. You will not undertake to swear that before 1881, the present system of collecting quotations by messengers located at the pits and telegraph instruments at one of the pits, devoted exclusively to that service prevailed, will you?

A. There were no telegraph instruments in the pits prior to 1884.

Q. Well, were there any telegraph instruments on the floor of the Exchange? A. Yes sir.

Q. To which these quotations were taken? A. Yes sir.

Q. Prior to 1884? A. Yes sir.

Q. Well, now, that service was established by the Western Union between the years 1881 and 1884, wasn't it?

A. It was in force when I went on the floor in 1881; I don't know when it was established; it was a branch of the Western Union Gold & Stock Telegraph Company.

Q. Well, it was about that time that this ticker came into use, was it not?

A. No, the ticker came into use in the early '70's some time, I cannot remember the date.

Q. It was not until about 1881 that the ticker came into use in Chicago? A. It was prior to that.

Q. It was? A. Yes sir.

Q. When did the New York Stock quotations—when were they first distributed in Chicago? A. I can't remember, sir.

Q. The ticker first came into use in New York, did it not, in the distributions of stock quotations?

A. That is my recollection, sir.

Q. Was this Edison ticker that you speak of the one that finally became the property of the Gold & Stock Telegraph Company?

A. Well, I cannot tell whether it became their property or not; they used it.

Q. Was that the first one they used?

A. I am pretty sure it was, to the best of my knowledge, yes sir.

Q. It was the original ticker? A. It seems to me so.

1233 Q. That passed into the control, in some way, of the Gold & Stock Telegraph Company? A. Yes, sir.

Q. Well, did the Western Union Telegraph Company distribute quotations by ticker before they acquired this arrangement with the Gold & Stock Telegraph Company for the use of the ticker?

A. I couldn't state definitely what their arrangement was.

Q. Don't you know that the Western Union Telegraph Company did not acquire its control of or interest in the Gold & Stock Telegraph Company until the year 1882?

A. I do not know, sir.

Q. Which commenced first the distribution of quotations in cities over this ticker, or the present system of Morse instruments and continuous quotations the country over?

A. The former plan.

Q. The ticker plan was the first? A. Yes, sir.

Q. And this transmission by Morse instruments on a wire specially devoted to a quotation running from city to city followed that? A. Yes sir.

Q. Now, don't you know that that was not done prior to 1881?

A. I couldn't state definitely. To the best of my knowledge, we had no special wire for that, that we sent them on. We had special wires arranged, but in case they were down we changed them to others. We had no such arrangement as is in existence now.

Q. At present wires are assigned during market hours, running to the different cities from the wheat pit, which are devoted exclusively to those quotations, is that true?

A. I don't know how they are arranged now, sir. I have not had any connection with them for ten years.

Q. These telegrams sent out by Morse that you have spoken of, they were filed about every fifteen minutes, were they not?

A. I cannot remember; they came in quite frequently, sir. We had a force of men in there compiling them all the time; I don't remember the arrangement; I can't recall it. It is thirty years ago now, thirty years ago when the Morse Brothers were handling the stuff.

Q. Didn't the Morse Brothers continue up until late in the '70's?

1234 A. I don't remember when they went out. I can't recall. The Elder Morse retired and the younger Morse went in with Jamieson. I can't remember the dates.

Q. Well, those quotations that Morse sent out were to be distinguished from the present quotations in that they were not continuous quotations, going out all the time?

A. My impression is that they were not continuous.

Q. And they came to you by messages, did they, signed Morse Brothers? A. Yes sir, they were signed Morse.

Q. And Morse Brothers paid the Telegraph Companies for transmitting them, as you understand it? A. I don't know, sir.

Q. Well, did they come, so far as your department was concerned, did they come in the same method as other messages of customers of the Telegraph Companies?

A. They were handed in through the open door; the boy brought them in from their office to the operating room on what they call "flimsy".

Q. Weren't they in general form like other messages sent in by other customers?

A. They were not on the same blanks; they were on tissue paper.

Q. But you would not undertake to say they were not treated by the Western Union the same as other messages and collected for in the same way?

A. I don't know what the arrangement was for paying for them. They were given precedence over other business.

Q. And the Western Union had certain persons whose names—certain names furnished by the Morse Brothers, to whom to send these messages?

A. Really I couldn't remember about that. I couldn't state definitely.

Q. Do you know that that was not so?

A. No sir, I don't know.

Q. Well, there was a period you have said of a few years along in 1884 when the Western Union itself collected these quotations? A. Up to 1884, yes sir.

1235 Q. Yes, preceding 1884?

A. They collected them through the medium of the Gold & Stock Company, which were always considered a branch of the Western Union.

Q. And that was after the Western Union had acquired the control of the Gold & Stock Telegraph Company?

A. Probably, yes.

Q. During all the time that the Western Union collected these quotations and transmitted them, was it done under the name of the Gold & Stock Telegraph Company?

A. It was handled exclusively by the Gold & Stock Telegraph Company and their operators and employes.

Q. During this time we are speaking of now? A. Yes sir.

Q. That ended the latter part of 1883 or early in 1884, did it not? A. 1884, in the spring.

Q. At that time, the Board of Trade took upon itself the collection of its own quotations, did it not? A. Yes sir.

Q. And you were employed by the Board of Trade for that purpose? A. Yes sir.

Q. And after that the Western Union ceased to collect quotations on the floor of the exchange, did it? A. Yes sir.

Q. And to receive them, expect as it received them from the Board of Trade? A. Yes sir.

Q. And in order to get the quotations then, the customer of the Western Union had to make an application to the Western Union and that was turned over to you, or to the Board of Trade? A. Yes sir.

Q. Before any quotations were furnished that customer?

A. The application was addressed to the Board of Trade, handed to me by the Western Union.

Q. And the quotations did not go to that person until the Board of Trade had acted upon that application?

A. That is right, sir.

Q. And when they acted on the application it was handed to you and you saw that the applicant got the quotations?

A. Yes sir.

1236 Q. And how long did that system of collecting and distributing quotations continue? A. Until—

Q. About 1889? A. 1889, yes sir.

Q. And you were in the employ of the Board of Trade all that time? A. Yes sir.

Q. Now during that period everybody who wanted these quotations did not get them, did they? A. No, sir.

Q. Only such persons as the Board of Trade was willing to give them to?

A. Only such persons as were approved by the Board of Trade, and such persons as received them by virtue of injunction.

Q. When did that service cease? A. April, 1889.

Q. Then your employment in that service ceased at the same time, did it? A. Yes sir.

Q. Then what happened?

A. I really couldn't tell you after that, sir.

Q. Were the quotations collected by anybody after that?

A. I really cannot say, sir; I cannot tell you of my own knowledge.

Q. Don't you know that for a year after that time the quotations were only furnished to members of the Board of Trade?

A. I don't know, sir.

Q. You were not connected with it?

A. No, sir, not connected with it in any capacity whatever.

Q. What did you do?

A. I went over to the Postal and went to telegraphing.

Q. Well, do you know that from early in 1890 for two years, commencing early in 1890, the quotations were not sent out by anybody? A. I don't know.

Q. Don't know that? A. No, sir.

Q. I show you a letter book, and see—and ask you if that refreshes your recollection as to when you ceased to work for the Board of Trade in the quotation service?

1237 A. Well, this is dated March 24th, 1890. It probably was April 1st, 1890, that I quit then, instead of 1889. I don't recollect. I thought it was 1889.

Q. Well, now isn't it true that after the 31st of May, 1889, the plan that you were then working under of giving the quotations to such persons, members or non-members, as were approved by the Board of Trade, was discontinued, and after that date and up to the first day of April, 1890, the quotations were given only to members?

A. Judging from that circular; it was; I cannot remember it exactly all that time, and I did not recall the circular until I just happened to see it now; I don't think that the system was much different, only they were just cut off.

Q. Non-members? A. Non-members, yes.

Q. During that year?

A. It seems so, yes, to the best of my recollection.

Q. See if this further refreshes your recollection as to the fact that non-members were cut off after May 31st, 1889?

A. Yes, this is the letter, acting in accordance with those instructions contained in that printed circular.

Q. And that was the letter on which you acted?

A. It came to me, yes.

Q. Giving the list of the persons to be cut off?

A. Yes sir.

Q. And what was the date of that letter?

A. May 22nd, 1889.

Q. And it is signed by George F. Stone, Secretary of the Board, is it not?

A. Signed by George G. Parker, Chairman of the Committee.

Q. He was Chairman of one of the Committees of the Board of Trade? A. The quotation committee, yes sir.

Redirect Examination

By Mr. Jenks:

Q. Mr. Whitford, what copies of letters are those that you have just been referring to, that were shown you by Mr. Robbins?

1238 A. That is my letter book. Those letters were written under instructions from the quotation committee, the officers of the Board of Trade.

Q. Of the Board of Trade? A. Yes sir.

Q. Mr. Whitford, do you remember the fact that in 1882, many bills of complaint were filed in court by people in Chicago who were receiving the quotations, and I was their attorney, and that they obtained injunctions against the Board of Trade, against the Western Union Telegraph Company and against the Gold & Stock Telegraph Company, to prevent the cutting off of the market reports from those complainants in the bills?

A. I don't know when those injunctions were secured. I cannot remember dates.

Q. Do you remember that those injunctions were procured in 1882, and that in the early part of 1883 some of those cases were taken up in court and motions made to dissolve the injunctions? A. I cannot recall the date.

Q. Where Mr. Goudy, William C. Goudy was in the case, Leonard Swett was in the case, John N. Jewett, Lawrence, Campbell & Lawrence old Judge Lawrence, and several others, don't you remember that?

A. My recollection of those things is indistinct, I did not come into contact, in connection with this matter until after 1884, to the best of my knowledge.

Q. Do you remember the time that before Judge Tuley, in one of these cases, we had all of the officers of the Board of Trade up for contempt of court?

A. I cannot remember that, Mr. Jenks. I might have an indistinct recollection of the troubles prior to my taking hold of the Board of Trade service, but I cannot remember the particulars.

Q. You cannot remember the dates? A. No, sir.

Q. Do you remember when it was that I used to meet you?

A. Well, it was after 1884.

Q. Do you think it was?

1239 A. It seem to me so, because my active connection with this matter did not occur until then; I did not take hold of it until the spring of 1884.

Q. Then after those injunctions were obtained, and the Board of Trade did not get rid of them, do you remember that the Board of Trade undertook to devise a scheme by which they could send those market reports out to selected correspondents, as they called it?

A. They arranged to send markets to private correspondents that dealt on the floor; that was their idea.

Q. Now do you remember the time that the Board of Trade started out to send those reports to approved correspondents by what they called a continuous message? A. Yes.

Q. Starting the message in the morning? A. Yes sir.
Q. And ending it after the Board closed and signing the name, "Board of Trade of Chicago" to that message?
A. Yes sir.
Q. Well, do you remember that all of that was before this case that Mr. Robbins referred to, the New York & Chicago Grain & Stock Exchange vs. The Board of Trade of the City of Chicago, et al., which is reported in the 127 Ill., at page 153?
A. I don't recollect Mr. Robbins referring to that.
Q. He had it in his hands when he was questioning you?
A. Yes.
Q. Now do you remember anything about that case, the New York and Chicago Grain & Stock Exchange vs. Board of Trade of the City of Chicago and others, and do you remember that Bisbee, Ahrens & Decker were interested in that case?

Mr. Robbins: Let's see, is that re-direct examination? I didn't refer to that case. I had it in my hand.
Mr. Jenks: I am just trying to fix the time.

A. I cannot remember the date. I recollect the names of all these lawyers, and I remember the case, but I cannot recollect the dates.
Q. Well, do you remember that after the decision in this case, the decision by our Supreme Court, that the Board
1240 of Trade found it had made a mistake, and that after that the Western Union Telegraph Company went back on the floor of the Exchange and gathered the market reports and send them out?
[Q.] At what date, at what time?
Q. Some time after the decision by the Supreme Court in this case? A. I cannot remember that.
Q. Where the court said that the continuous messages would not serve to get around the fact that these reports were public?
A. I cannot remember the decision, nor I cannot remember that fact, Mr. Jenks.
Q. And you cannot remember the date? A. No.
Q. Now you think you left there, the Board of Trade—were you just an operator there?
A. On the Board of Trade?
Q. Yes? A. I was manager of the quotation department.
Q. In what way did they gather those quotations at that time? A. During my career?
Q. Yes?
A. Well, we had a reporter in the pit, and we had a boy at hand; we had a telegraph instrument in the center of the hall, and the reporter noted all the changes and handed them

to the boy on a slip of paper and he brought them to the operator, who transmitted them.

Q. Those were transmitted to what portions of the country?

A. To the approved correspondent to the best of my knowledge; they were transmitted through the different Telegraph Companies to private correspondents.

Q. Not to any others?

A. By virtue of injunction they received them, yes, sir. I don't know how they got that.

Q. And didn't the Western Union at that time have tickers around in different public places?

A. To the best of my knowledge, yes sir.

Q. In banks and hotels and such places? A. Yes sir.

Mr. Robbins: What time, since 1884?

1241 A. You are talking about during the time that I was connected with the Board of Trade, are you not, Mr. Jenks?

Mr. Jenks: Yes?

A. Yes sir, that is the Gold and Stock Telegraph Company, Mr. Jenks.

Q. But was not the Gold & Stock Telegraph Company and the use of those tickers under the control of the Western Union all the time? A. They were intimately connected with them.

Q. You don't know how? A. No, I had no knowledge of it.

Q. You don't know that the Western Union leased all the instruments that the Gold & Stock had?

A. Really, I have no knowledge of that.

Q. Do you know this, that the Western Union Telegraph Company, under the name of the Gold & Stock Telegraph Company, conducted all the business here in Chicago?

A. Our transactions were entirely with the Western Union.

Q. Now from the time the tickers came into use, in so far as you can remember anything about it, have not the market reports from the Board of Trade of the city of Chicago, been transmitted by wire to these tickers and there reported in public places, hotels, banks and other public places, clear down to the present time?

Mr. Robbins: I object to that as leading and not redirect.

The Master: This is your witness Mr. Jenks.

Mr. Jenks: I know it.

The Master: I think the objection is good.

Mr. Jenks: Q. Do you know when the market reports from the Board of Trade commenced to be designated by ticker instruments located in public places in the city of Chicago?

A. When that commenced?

Q. Yes? A. I cannot remember the date exactly, no sir.

Q. With reference to the time that tickers came in use, can you remember?

A. It was in the early '70's some time, I cannot remember the date, no sir.

1242 Q. And for how long a time has that continued?

A. The tickers have been in constant use since.

Q. And the reports upon them, the market reports?

A. Well, some of the tickers are not used for market reports; some are what are called sporting tickers.

Q. What I refer to is, the market reports from the Board of Trade of the City of Chicago?

A. The reports from the Board of Trade ceased—or did not commence in fact until the spring of 1884, technically speaking.

Q. I am not speaking of the Board of Trade sending them out, but they were sent out long before that by the Telegraph Company, the Western Union?

Mr. Robbins: I object to putting that in the question.

Mr. Jenks: Q. Now I want to know when the market reports from the Board of Trade, I mean the market made on the Board, when did they commence to appear at ticker instruments that were in public places?

A. The tickers were installed to disseminate the quotations.

Q. How early was that? A. That is in the early seventies.

Q. Since that time has there been a time when the market reports were not reported by those tickers?

A. They have been reported on the tickers all the time with the exception of certain tickers that were ordered cut out by the Board of Trade; some of the tickers were stopped because they thought they were illegal.

Q. What I meant was, the tickers they have in public places, such as Banks and Hotels?

A. They were taken out of many Banks, many Hotels and many saloons, Mr. Jenks.

Q. But left in many places?

A. Yes, of approved correspondents.

Q. So that constantly, from the time that the tickers were first used, the market reports have appeared on those tickers in some places? A. Yes sir.

1243 Q. Some public places?

A. Yes, sir, they were ordered stopped there according to that letter in 1889. I don't know—

Q. You were then acting for the Board of Trade of the City of Chicago? A. Yes sir.

Q. That, that you have been looking at is some evidence that the Board of Trade got up at the time? A. Yes, sir.

Q. When you left the employ of the Board of Trade, did you go back to the Western Union? A. No, sir.

Q. How long before you went back there?

A. I have never been back.

Q. How long before you went with the Postal Telegraph Company? A. Oh, within a month or so.

Q. About 1890, you went there?

A. About, yes, I quit the Board of Trade in April, 1890, and I think I went to work in May for the Postal, Mr. Jenks.

Q. Did the Postal Telegraph Company send out the market reports from the Board of Trade?

A. Well, we delivered them to the Postal Telegraph Company. Do you mean the Postal?

Q. No, I mean after you went to work for the Postal?

A. I don't know, sir. My connection ceased entirely.

Q. You don't know? A. No, sir.

Recross-Examination

By Mr. Robbins:

Q. Mr. Whitford, the quotations were not distributed over tickers, over tickers by the Western Union Telegraph Company until the Western Union Telegraph Company acquired control of the Gold & Stock Telegraph Company?

A. Well, I cannot state of my own knowledge, that is my impression.

Q. Isn't it also your impression that until the Western Union acquired control of the Gold & Stock that the quotations on the Board of Trade were distributed by ticker?

A. Well, I cannot recall that, I do not remember. I have no knowledge of the contract at all, and this whole matter of an arrangement between the Gold & Stock and Western
1244 Union is dim in my memory; I don't know when that started. I cannot recollect it.

Q. The fact I want to find out is, whether it is not true that until the Western Union acquired control of the Gold & Stock that no quotations were sent out by tickers at all in Chicago, or from Chicago?

A. My impression is that the Gold & Stock Company originated,—came here with the ticker; it seems to me so. I cannot recollect that, and we did not have any Gold & Stock Company until we had that ticker; that seems to—

Q. Isn't it true that the ticker service was not operated in the name of the Gold & Stock Telegraph Company in Chicago or with respect to Chicago quotations, until the Western Union Telegraph Company acquired control of the Gold & Stock Telegraph Company?

A. I couldn't say to my own knowledge.

Q. Then you don't know, you wouldn't undertake to say when tickers came into use for the distribution of Board of Trade quotations, would you?

A. I cannot state positively, no sir.

Q. You would not undertake to say it was not until after the Western Union had acquired the control of the Gold & Stock? A. I couldn't say, no sir, not definitely.

Q. And I understand your evidence to be that you would not undertake to say when the quotations of the Chicago Board of Trade were first distributed over tickers?

A. No sir, I couldn't say definitely.

Q. You speak about the quotations being distributed in public places; you mean by that brokers' offices and Banks?

A. Yes, general distribution.

Q. You don't mean any public place where they were distributed or sent?

A. No, sir, they were not distributed in any places that did not pay for them.

Q. Would you be assisted in fixing the time when the quotations were distributed by ticker, by having your attention called to a document showing when the Western Union Telegraph Company acquired the control of the Gold & Stock Telegraph Company?

1245

A. No, sir, I would not; I never paid any attention to it in those days.

Q. You never personally had anything to do with it until 1884?

A. No, sir, I was an employe up stairs, and I was inside; I didn't know anything about these contracts nor the arrangements.

Q. Had nothing to do with the starting of the ticker service? A. No sir.

Q. Or with the ticker service until 1884?

A. No sir, not personally.

Mr. Jenks: Well is that the end of this? That is all we will put it.

Mr. Robbins: End of what? Is it the end of your case?

Mr. Jenks: Yes.

Mr. Robbins: The defendants close their evidence?

Mr. Jenks: Yes sir.

Mr. Robbins: Well, I will close mine tomorrow morning.

Mr. Jenks: We will object to Mr. Robbins putting in any more evidence in his case either as rebuttal or otherwise, because the time for him to do so, as ordered by the court in which this case is pending, has already expired.

The Master: The Master will permit the complainant to put in purely rebuttal evidence providing they finish it by three o'clock tomorrow.

Mr. Robbins: There is a little trading ticket that was not formerly introduced in evidence, although it was offered.

The Master: You mean there was no formal offer, although it was marked?

Mr. Robbins: Yes.

The Master: At the point where it is referred to it may be considered as offered, objected to and the objection overruled.

Adjourned, at 11:45 A. M. of said day until 9:30 o'clock A. M. the following day, December 11th. 1901.

1246 It was stipulated by and between counsel for respecitve parties hereto that the Clearing house Sheet marked "Defendant's Exhibit 11" and hereto attached should be admitted in evidence for the use of both parties upon the trial of this cause, which said Clearing House Sheet marked "Defendant's Exhibit 11" is herewith returned by the Master and is in the words and figures as follows to wit:

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

1248 United States of America,
State of Illinois—ss.

In the United States of America in and for the Southern District of Ohio,

Board of Trade of the City of Chicago, a corporation,
vs.
O'Dell Commission Company, a corporation.

I, Max Whitney, Special Master appointed by said Court do hereby certify that on the 26th day of November, A. D. 1901, and on subsequent days thereafter until and including the 10th day of December, A. D. 1901, as shown by the adjournments herein, personally appeared before me at my office in the Monadnock Building in the City of Chicago, County of Cook, and State of Illinois, Clinton D. French, Grant W. Kenney, Robert H. Nye, John S. Watson, Walter C. Hough, Charles K. Nims, James B. Heth, Charles C. Christie, William E. McHenry, James E. Boyd, W. S. Crosby, Samuel Powell, A. W. Wright, William J. Fox, George F. Stone, William S. Warren, Walter Comstock, Robert S. Worthington, Lyman L. Kellogg, Louis K. Whitcomb, Henry Behl and Edward P. Whitford, witnesses produced on behalf of the defendant in a certain cause now pending and undetermined in the United States Circuit Court in and for the Southern District of Ohio wherein the Board of Trade of the City of Chicago is complainant, and O'Dell Commission Company is defendant.

I further certify that the said witnesses above named, and each and every of them were by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by them was reduced to writing in the presence of said witnesses by means of short-
hand and afterwards transcribed upon a typewriter, and
1249 the foregoing is a true and accurate transcript of the testimony so given by them as aforesaid.

I further certify that the signatures of the witnesses to the foregoing depositions were waived by agreement of counsel, it being stipulated herein that said depositions may be read upon the trial of this cause with the same force and effect as if the witnesses had signed and again made oath, each to his own deposition.

I further certify that the taking of these depositions was in pursuance of the order of the Court herein made and that there were present at the taking of these depositions, Mr. Henry S. Robbins, solicitor for complainant, and Mr. A. B. Jenks, solicitor for defendant, Mr. Harkless and Mr. Shay appearing of counsel for defendant.

I further certify that I am not counsel for, nor in any way related to any of the parties in this suit, nor am I in any way interested in the outcome thereof.

In Testimony Whereof I have hereunto set my hand this .... day of December, A. D. 1901.

Master's and Stenographer's fees $....
Paid by defendant.

.....

1250 9:30 o'clock A. M., December 11th, 1901, parties met pursuant to adjournment.

George F. Stone, called as a witness on behalf of the complainant, having been first duly sworn was examined in chief by Mr. Robbins and testified as follows:

Q. Mr. Stone, how long have you been Secretary of the Board of Trade?

Mr. Jenks: Wait one moment, I object to the question, and I make the same objection that I did yesterday to Mr. Robbins at this time putting in any evidence at all, either in rebuttal or otherwise.

The Master: The Master will permit the complainant to put in rebuttal evidence over the objection made.

Mr. Robbins: You may answer.

Mr. Jenks: I save an exception to the ruling of the Master. To which ruling of the Master, the defendant by his counsel then and there duly excepted.

A. A little over seventeen years.

Mr. Robbins: Q. Are you the custodian of the records of the Board of Trade? A. I am.

Q. And have been for the last seventeen years?

A. Yes sir.

Q. How far back do the records go?

A. Go back to the fire.

Q. Have you anything prior to the fire that you know of in the way of records? A. Not that I know of.

Q. What was the first action—say when was the first action taken by the Board of Trade in reference to the collection or distribution of its market quotations so far as the records show?

Mr. Jenks: Objected to as not rebuttal and as incompetent and irrelevant in this case, and for the further reason that the Board of Trade by its own records cannot make evidence controlling or relating to facts that have been proven in this case.

The Master: I think the first part of the objection is
1251 good, but as to the last proposition that the records of the Board of Trade are incompetent—

Mr. Robbins: That is what I am going to try to prove, but I have got to locate the time when the first records were made, then I will introduce them.

Mr. Jenks: I see.

The Master: This last question—read the last question, please.

Mr. Robbins: In reference to the collection or distribution of its market quotations so far as the records show?

The Master: That question may be answered, objection overruled.

Mr. Jenks: We save an exception.

To which ruling of the court the defendant by his counsel then and there duly excepted.

A. 1883.

Mr. Robbins: Q. What was that action?

Mr. Jenks: I object to the question for the same reason.

Mr. Robbins: I mean by that what was the nature of that action?

Mr. Jenks: I still object for the same reason.

The Master: That question may be answered.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Well, I should say—

Mr. Jenks: I save an exception.

A. That action was, was the adoption of a rule by the Board of Trade authorizing the—

Mr. Robbins: Never mind about that, have you the record containing that rule? A. Yes sir.

Q. Please produce it?

Mr. Jenks: Same objection.

1252 Mr. Robbins: Q. And turn to the rule that you referred to?

Mr. Jenks: Same objection as formerly made as to the records of the Board of Trade and the same as to this not being rebuttal of anything in this case.

The Master: Overruled.

Mr. Jenks: I save an exception.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Section 20 of rule 4.

Mr. Robbins: I offer that rule in evidence and ask that the witness read the rule into the record.

Mr. Jenks: I object to that.

The Master: I would like to have you qualify him a little further to the effect that he knows of his own knowledge as to the rule.

Mr. Robbins: Q. Do you know of your own knowledge that that was the rule of the Board of Trade adopted at the time you speak of?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. I do.

Mr. Robbins: Instead of reading it, I have prepared that copy—I have got a copy and that can be compared by the stenographer.

And thereupon the paper produced by the complainant's counsel was directed to be put in as the answer of the witness to the last question herein. Which said paper is in the words and figures following, to wit:

1253 The following is a copy of Section 20 of Rule IV of the Rules of the Board of Trade of the City of Chicago, adopted August 29, 1893:

Sec. 20. The Board of Directors shall provide an efficient corps of market reporters, whose duty it shall be, under such regulations as may be prescribed for their government, to ascertain the current market prices of such commodities as are dealt in by members of the Association, during the hours of trading prescribed by these rules, the reporting of which may be desired by any considerable number of correspondents, and also all changes which may occur in the same from time to time; such reports to be promptly communicated by telegraph to such approved correspondents in the City of Chicago or elsewhere, as may desire the same, and are willing to pay the necessary charges for compiling and transmitting them by telegraph under such arrangements as may be made by the Board of Directors with any telegraph company for the performance of the service of transmission. The forwarding of such reports to any particular individual, firm or corporation shall be only on the condition that it is an accommodation service, in which the Board of Trade assumes no responsibility beyond reasonable care in their compilation, and one that may be performed at the pleasure of the Board, or if performed may be discontinued or withheld, with or without previous notice. Any individual, firm or corporation before being supplied with the

reports herein provided for, shall make application for the same in such form or manner as may be authorized by the Board of Directors, which application shall be approved by the Board of Directors, or by a committee appointed by it for that purpose, before any reports are forwarded to the applicants. A list of all correspondents to whom such reports are sent shall be kept on file in the office of the Secretary of the Board, and shall be subject to the inspection of any member desiring to do so.

1254 Mr. Jenks: I will move to strike that out for the reason that it has been decided by the court that that rule is illegal, inoperative and void.

The Master: Overruled; let it stand subject to his objection.

Mr. Robbins: Q. When was the next action taken by the Board of Trade with respect to the collection or distribution of its quotations as shown upon its record?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. In '89.

Mr. Robbins: Q. Have you the record of the action of the Board at that time present here?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Yes sir, I have the record here.

Mr. Robbins: Q. What book have you now in your hands?

A. I have the record of the proceedings of the Board of Directors of the Board of Trade for the year 1889.

[A.] Kept by you? A. Kept by me.

Mr. Robbins: I offer in evidence the resolution appearing of record on page 135 of this record and ask that the witness read the resolution into the record as the book is a large one and required in the Board of Trade. The Board of Trade does not wish to send it out of this jurisdiction.

Mr. Jenks: Same objection. Well, I don't know that it is necessary to object to all of this.

The Master: No, if this is the testimony you object to as I understand it, as being incompetent.

1255 Mr. Jenks: I object to this testimony as not rebuttal, as incompetent, irrelevant and not in the power of the Board of Trade by its own records to bolster up transactions that are conducted in its exchange room.

The Master: The evidence will be allowed in subject to the objection.

Mr. Robbins: He need not read it in because I have furnished it.

Mr. Jenks: I except to the ruling of the Master.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

And thereupon said paper produced by counsel for complainant was directed to be put in the record as the answer of the witness to the last question. Which said paper is in the words and figures following, to wit:

The following preamble and resolution was adopted by the Board of Directors of the Board of Trade of the City of Chicago on the 14th day of May, 1889:

Whereas, The Supreme Court of this State has decided that the Board of Trade of the City of Chicago may discontinue furnishing to the public market quotations; but, at the same time, holds that, so long as it continues to so furnish them, either directly or indirectly, it must furnish market quotations to all who may desire to obtain them, for lawful purposes, upon equal terms; and,

Whereas, Such decision practically deprives the Board of all discretion in the premises, as it will be impossible to determine in advance whether the party applying for quotations intends to, or will, in fact, thereafter, use them for unlawful purposes; and, when once granted, to attempt the discontinuance of such quotations on the ground of illegal use, would involve this Board in a mass of litigation [to] grievous and burdensome to be borne; and,

1256 Whereas, In this dilemma, it is deemed best for the interest of legitimate trade to withhold these quotations from the public altogether, as the least of two evils, and to furnish them to members of this Board only; therefore,

Resolved, That on and after the 31st day of May, A. D. 1889, such market quotations will be furnished to such members only and will be withdrawn from all parties not members; and that the Secretary of this Board is directed to transmit copies of this Resolution to all parties who are not members, but who are now receiving these quotations.

The Master: You don't object to the fact of the copy being put in?

Mr. Jenks: No,—that is, I object to the copy being put in, but I don't object to the use of the copy instead of the book.

The Master: Very well.

Mr. Robbins: Q. Under what date is the meeting of the Board of Directors that contains the resolution you have just read?

Mr. Jenks: Same objection.

Which objection overruled by the Master; to which ruling of the Master the defendant by his counsel then and there duly excepted.

A. May 14th, 1889.

Mr. Robbins: Q. What was the next action of the Board of Directors respecting the collection or distribution of its quotations as shown by its records?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. July 9th, of the same year.

Mr. Robbins: Q. Read the resolution of the Board of Directors of that date?

1257 Mr. Jenks: Same objection.

Mr. Robbins: Q. From this book?

The Master: Have you a copy of it?

Mr. Robbins: Yes.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

And thereupon the paper produced by counsel for complainant was directed to be put in the record as the answer of the witness, which said paper is in the words and figures following, to wit:

The following resolutions were adopted by the Board of Directors of the Board of Trade of the City of Chicago, at its regular meeting held July 9, 1889;

Resolved, that this Board discontinues the business of instantaneous and continuous transmission, to parties and places outside of the Exchange Hall of this Board, of market quotations, as the same is now being conducted; and that in lieu thereof, such quotations be transmitted at periods of fifteen minutes and not oftener, to all parties upon equal terms who may desire them for lawful purposes.

Resolved, that the Attorney of this Board is directed to proceed without delay to procure a dissolution or modification of injunctions in all pending suits against this Board, so that the foregoing resolution may be carried into immediate effect.

Mr. Robbins: Q. That also appears on the regular records of the meeting of the Board of Directors of the Board of Trade held on July 9th, 1889, on page 173 of the record?

Mr. Jenks: Same objection.

1258 Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Yes sir.

Mr. Robbins: What is the next action of the Board of Trade respecting its collection or distribution of its quotations as shown by the records?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. March 1st, 1890.

Mr. Robbins: Q. Are those the minutes of the meeting of the Directors of the Board of Trade held on that day?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Yes sir.

Mr. Robbins: I offer in evidence the resolution appearing in the record of that date.

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

Which said resolution was admitted in evidence and is in the words and figures following, to wit:

The following preamble and resolutions were adopted by the Board of Directors of the Board of Trade of the City of Chicago, at its meeting held March 1, 1890:

1259 Whereas, The Board of Trade of the City of Chicago, at its annual meeting held on the 13th day of January, 1890, passed a resolution that the Directors be authorized at their discretion to discontinue the department of market reports; be it

Resolved, that after the 31st day of March, 1890, the department of market reports be discontinued and said department abolished; that after that date, the collection and furnishing of market reports and quotations be entirely discontinued and

that the Board of that day abandon entirely the business of collecting and furnishing such market reports and quotations.

Resolved, that all persons employed in the department of market reports be notified that after the 31st day of March, 1890, their services will be no longer required and that their employment by the Board of Trade of the City of Chicago will cease on that day.

Resolved, that all resolutions in conflict with the terms of these resolutions be, and the same are, hereby rescinded, and that all contracts, regulations and arrangements in regard to such market reports and quotations shall cease, determine and be abrogated on the 31st day of March, 1890.

Resolved, that the Secretary be directed to send a certified copy of these resolutions to the Western Union Telegraph Company and request the said Telegraph Company to notify all persons to whom said company is now furnishing said market reports and quotations of the passage of these resolutions; and that the Secretary also notify the members of the Association of the passage of these resolutions.

1260 The Witness: That is on page 47.

Mr. Robbins: Q. What was the next action of the Board of Directors with respect to these quotations as shown by its records in your possession?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. The 31st of May, 1892.

Mr. Robbins: Q. Are you now referring to the minutes of the meeting of the Board of Directors of the Board of Trade of that day appearing in your minutes?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. I am.

Mr. Robbins: Q. I will ask you to read from your records the resolution—the action of the Board of Directors at that time and at that meeting. Now there is a copy of it.

Mr. Jenks. Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

Thereupon the paper produced by counsel for complainant was directed to be put into the record as the answer of the witness, which paper is as follows:

The following is a copy of the permit, presented by the Market Report Committee to the Board of Directors, on May 31, 1892; and also a copy of the resolution approving the same.

The Board of Trade of the city of Chicago hereby
1261 grants permission to the Western Union Telegraph Company and the Postal Telegraph Cable Company, parties hereto, jointly and separately, to collect at their own cost and expense, in the exchange hall of the said Board of Trade of the City of Chicago, for transmission over their telegraph lines, full and continuous quotations and reports of all commodities dealt in, which are made in the said exchange hall during the hours for trading prescribed by the rules of the said Board of Trade of the City of Chicago, subject to the following terms and conditions:

First: Such quotations shall be collected by persons in the employment of the telegraph companies, parties hereto, and not more than one manager, five reporters, one telegraph operator and five messengers shall be permitted upon the floor of the said exchange hall for the purpose of collecting such quotations.

Second. Such quotations, when and as collected, shall be delivered by the persons collecting the same at a counter, suitable space for which is to be provided by the said Board of Trade of the City of Chicago, between the present office of the Chicago, & Milwaukee Telegraph Company on the north end of the Exchange floor and the first pillar east thereof.

Third. Persons employed by the said telegraph companies to collect said quotations shall not engage in, nor transact, any other business in the exchange hall, except the collection and distribution of said quotations.

Fourth. Such persons shall, in their general conduct, be subject to such rules and regulations as the Board of Trade of the City of Chicago, through its Board of Directors, or the appropriate committee of said Board of Directors, shall prescribe.

Fifth. Such quotations shall not be sent out as official quotations of the Board of Trade of the City of Chicago, nor shall the Board of Trade of the City of Chicago have any responsibility for the correctness or accuracy of any such quotations.

Sixth. This permission to remain in force for the
1262 period of one year from the date hereof.

Resolved: That the report of the committee on market reports be and hereby is accepted, and that the proper officers of the Board of the City of Chicago be and hereby are

authorized to sign the permit, as read, to the telegraph companies to collect and disseminate market quotations for one year.

Mr. Robbins: Q. Do you know whether these resolutions were put into effect after they were adopted by the Board of Directors?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. They were.

Mr. Robbins: Was the collection and distribution of these quotations entirely discontinued after March 1st, 1900?

Mr. Jenks: I object to that question as not rebuttal, as incompetent and irrelevant.

The Master: The question may be answered subject to the objection.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Yes, sir.

Mr. Robbins: Q. For how long a period was the collection and distribution of these quotations discontinued?

Mr. Jenks: Same objection.

The Master: It may go in subject to objection.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

1263 A. The distribution of these quotations—the collection and distribution of these quotations was discontinued until the 31st day of May, 1892.

Mr. Robbins: Q. Now from the first day of April, 1890, to the 31st day of May, 1892, were the quotations of the Chicago Board of Trade collected or distributed either by the Board of Trade of the City of Chicago, or by any other person or corporation with its sanction?

Mr. Jenks: The same objection and the further objection that the question is leading.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. They were not.

Mr. Robbins: Q. I show you defendant's exhibit 1, being the clearing house sheet, and ask you to state what persons whose names appear on that sheet, if any, are owners and operators of grain elevators in the city of Chicago?

Mr. Jenks: We object to that as not rebuttal, as incompetent and irrelevant to the issues in this case.

The Master: He may answer subject to the objection.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Read that question, so much has occurred since then.

(Question read.)

A. The Anglo-American Provision Company.

Mr. Robbins: Q. That is, grain elevators, Mr. Stone?

A. I, Oh, grain elevators? [A.] The Armour Grain Company, Bartlett, Frazier & Company, Carrington, Hanna & Company, Charles Counselman & Company, A. A. Fowler & Company, National Elevator & Dock Company, Nye & Janks Grain Company, Peavy Grain Company and Weare Commission Company.

1264 Q. Are the persons you named operators of what is known as class A, or public warehouses in the city of Chicago?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Yes, sir.

Mr. Robbins: Q. Are there different classes—are there any other kinds of grain elevators in the city of Chicago, except the class I have just referred to?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Yes, sir.

Mr. Robbins: Q. What are they called?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

[Q.] Well, they are commonly known as private elevators.

Q. Now are there on this warehouse sheet any owners of these so-called private elevators?

The Master: You mean on this clearing house sheet?

Mr. Robbins: Clearing house sheet, yes sir.

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Yes, sir.

Mr. Robbins: Q. You have not included them in your answer? A. I have not.

1265 Q. Do you know how many of that class of private elevators there are in Chicago?

Objected to by counsel for defendant; which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. I do not.

Mr. Robbins: Q. How many of the names of the persons whose names appear on this clearing house sheet are proprietors of provision warehouses in the city of Chicago?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. About fifteen, I guess.

Mr. Robbins: Q. Please give their names?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

A. S. W. Allerton, Anglo-American Provision Company, Armour & Company, Boyd, Lunham & Company, Continental Packing Company, John Cudahy, The Cudahy Packing Company, Ellsworth & Crosse, Hatley Brothers, John Morrell & Company, Limited, Nelson, Morris & Company, North American Provision Company, Omaha Packing Company, Swift & Company.

Mr. Robbins: Q. Are the names that you have just given —are the persons whose names you have just given engaged in any other business in the city of Chicago than keeping private warehouses?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master the defendant by its counsel then and there duly excepted.

1266 A. Not that know of.

Mr. Robbins: Q. Are they engaged in the packing business?

Objected to by counsel for defendant, which objection was overruled by the Master; to which ruling of the Master defendant by its counsel then and there duly excepted.

A. Engaged in the packing business? They are.

Mr. Robbins: Q. What is the business of the Albert Dickinson Company, if you know?

Objected to by counsel for defendant; which objection was overruled by the Master; to which ruling of the Master defendant by its counsel then and there duly excepted.

A. It is a seed business.

Mr. Robbins: Q. Does their name appear upon this clearing house sheet?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master defendant by its counsel then and there duly excepted.

A. It does not—yes it does, beg your pardon, I didn't see it.

Mr. Robbins: Q. Do you know whether they have a warehouse in the city of Chicago?

Mr. Jenks: Same objection.

Which objection was overruled by the Master; to which ruling of the Master defendant by its counsel then and there duly excepted.

A. Yes sir.

Mr. Robbins: Q. Mr. Stone, how many members of the Board of Trade were there expelled or suspended by its Board of Directors during the year 1900, for dealing in differences of the market prices of commodities without a bona fide purchase and sale of the property for actual delivery, or reporting fictitious trades?

Mr. Jenks: Same objection; that includes that it is not rebuttal, that it is incompetent and irrelevant in this case that the action of the Board of Directors as to its members
1267 has nothing to do with the issues in this case, and whether they expelled any or many members, is irrelevant here.

The Master: You may answer subject to the objection.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

A. At least ten.

Mr. Robbins: Q. How many of those were expelled and how many suspended?

Mr. Jenks: Same objection.
The Master: Answer subject to objection.
To which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Three expelled and seven suspended.
Mr. Robbins: Q. What were the periods of suspension?

Mr. Jenks: Same objection.
The Master: Answer subject to the objection.
To which ruling of the Master the defendant by its counsel then and there duly excepted.

A. Ranged from one year to five years.

Mr. Robbins: I believe that is all.
Mr. Jenks: I want to move to strike out the answer of the witness to the last question for the reason that the question was not competent. The answer discloses the fact that the witness is stating just his own conclusions as to the causes of the suspension or expulsion.
The Master: Overruled.
Mr. Robbins: I would like to ask him one question.
Q. Mr. Stone, were you present during these trials that you refer to?

Mr. Jenks: I object to that question.
Which objection was overruled by the Master; to which ruling of the Master defendant by its counsel then and there duly excepted.

A. I was.

1268 Mr. Jenks: Now I move to strike out the answer because whether he was present or not, there is a record kept or should be kept by a corporation as to the action of its Board of Directors, and the record is the best evidence.
The Master: Overruled.
To which ruling of the Master the defendant by its counsel then and there duly excepted.

Cross-Examination

By Mr. Jenks:

Q. Mr. Stone will you answer this question yes or no. Was there ever a time within your recollection when reports of transactions on the floor of the Exchange Room of the Board of Trade during business hours, were not in some way sent out over the country by telegraph?

A. I can't answer that yes or no. I can't tell how they were sent out or what people sent them out who were dealing on the floor. I know that there was no official dissemination of them at some time, and there was an official dissemination of them at other times. I can't very well answer that question yes or no, Mr. Jenks, that I can see.

Q. Don't you know it to be a fact that ever since you have been connected with the Board of Trade, the market reports have in some way been sent out over the country by wire?

A. I do not.

Q. Do you know that there ever was a time that in some way the market reports were not sent out over the country by wire? A. I do not.

Q. Do you know that the Western Union Telegraph Company ever ceased to send out over the country by wire the market reports from the Board of Trade before the year 1900?

A. I do not know.

Q. Do you know that the Postal Telegraph Company, from the time it commenced to send out the market reports from the floor of the Exchange Room of the Board of Trade of Chicago, ever ceased to send them out until in the year 1900?

1269 A. I don't know personally whether they ever ceased sending them out at any time.

Q. Have you this morning referred to any action of the Board of Trade or its Directors, which resulted in records being made which are not included in the printed rules of the Board of Trade, which printed rules have been offered here in evidence? A. Read me that question now, please?

(Question read.)

A. I have.

Q. Which ones?

A. The action of the Board of Directors in discontinuing the collection and dissemination of its market quotations and the action of the Board of Directors in resuming collection and dissemination of its market quotations; also the action of the Board of Directors on March 1st, 1890, discontinuing the collection and furnishing, dissemination of quotations, and the action of the Board of Directors on the 31st day of May, 1892, permitting—

Mr. Robbins: That is already in.

The Witness: Yes.

Mr. Jenks: Don't interrupt the witness; stand aside. Go way back and take a seat and sit down.

Mr. Robbins: We are going to get this in; you have fooled along here so much time, we are going to have it all in, Mr. Jenks.

The Master: You think you are going to have it out when you get down to Cincinnati?

Mr. Robbins: I would like to have the answer read to the witness.

Mr. Jenks: He is not through yet, is he?

The Master: Wait until he gets through and let him say when he gets through.

Mr. Robbins: May I say this to the witness: those that are copied into the record, you don't have to state what the contents are, just refer to them by date; they all appear in the record.

Mr. Jenks: I object to Mr. Robbins instructing his witness how to answer the questions.

1270 The Master: Complete your answer Mr. Stone.

(Answer read.)

A. Well, also on the 31st day of May, 1892. Now I have finished.

Mr. Robbins: Now read the answer to the witness.

(Answer read.)

Mr. Jenks: Q. What was that on the 31st day of May, 1892? What was it about?

A. It was about authorizing the Telegraph companies, Western Union Telegraph Company and Postal Telegraph Company to collect and disseminate market quotations for one year.

Q. Where is the one you refer to suspending or expelling members?

Mr. Robbins: He did not refer to any resolution suspending or expelling members.

Mr. Jenks: Never mind, young man.

Mr. Robbins: I have the right to inject that when you assume the record to state a thing that is not a fact.

Mr. Jenks: I think not.

Mr. Robbins: Well, I think so.

The Master: Read the question.

The Witness: Read the question.

(Question read.)

A. Gave them to Mr. Jenks, the last I saw of it.

Mr. Jenks: The resolution? A. The memorandum.

Q. The action of the—you gave me merely the names?

A. Well, that is all.

Q. Have you got a record of that?

A. Yes sir, I have the record of the action of the Board of Directors.

Q. In expelling? A. In expelling.

Q. Or suspending those members? A. Those members.

Q. That list includes the names of ten persons as you say. Have any other persons since the commencement of the year 1900 been expelled or suspended as members of the Board?

Mr. Robbins: Read that please.

(Question read.)

1271 A. Yes sir.

Mr. Jenks: Q. How many in all?

A. Since the year 1900.

Q. No? (Question read.) A. Eleven.

(And thereupon the last question and answer were read.)

The Witness: No, not how many in all; the former part of that question was, were there any others than those ten. My answer is that this 11 is the number of those besides this ten, in addition to this ten.

Mr. Jenks: Q. Now for what reason do you say that these ten were expelled?

A. I think that was in answer to the question how many were disciplined, either suspended or expelled, for dealing in fluctuations in the market price of properties without a bona fide delivery; that answer I gave to that question, I recollect it.

Q. And that you understand to be the reason of their expulsion or suspension? A. Yes sir.

Q. Were any of those ten expelled or suspended for having the same kind of dealings on the floor of the Exchange Room of the Board of Trade? A. Well, were any of those ten—

Q. Yes? A. Suspended or expelled for—

Q. Having that kind of dealings on the floor of the Exchange Room of the Board, or were all of the dealings outside of the floor?

A. They were for a violation of Section 8, Rule 4.

Q. And does not apply to transactions on the floor of the Exchange room, does it?

A. Well, that is for the year up until after this, I guess.

Q. Were any of them expelled for having that kind of dealings on the floor of the Exchange Room of the Board of Trade?

A. I can offer the charges, read the charges, that is all I know about it, what the charges were.

Q. And you don't know what they were?

A. I can read the charges, produce the charges.

Q. Well, do you know what they were?

A. I do not—I did not commit them to memory, I would rather read them.

Q. Well, you have answered as to what the charges were in your answers to Mr. Robbins' questions?

A. Well, I think so.

1272 Q. Well now, did you answer from recollection or from the record?

A. If I can remember the question to all that occurred since, I should say that I answered the question according to the best of my recollection.

Q. Well now, the names given by you included in the ten, are Charles R. and Albert O. McLain, Adolph H. Ruth, Henry O. Parker, James Nichol, Calvin A. Whyland, Stephen L. Robinson, John M. Fiske, Lyman L. Kellogg, and John Dwyer. Do you know whether either one of those members was expelled o disciplined for any conduct or transactions by him on the floor of the Exchange Room of the Board? A. No sir.

Q. You do not know, you say you do not know?

A. I say I do not know.

Q. What was Charles R. McLain expelled for?

A. He was expelled for having been found guilty of the charges that were filed against him.

Q. What were the charges?

A. I will read them from the record.

The Master: Can't you save time by stating the substance?

A. Yes sir, the substance, yes sir, I guess so. The charges were for violating—at least some of the charges it is a pretty long charge if I remember it, I have not seen it for two years or a year—mainly for violating the provisions of Section 8 of Rule 1 of the Rules of the Board for dealing in differences on the prices of commodities dealt in on the floor of the Exchange, without a bona fide purchase or sale, for an actual delivery.

Mr. Jenks: Q. Now was there any part of that, those transactions conducted by him on the floor of the Exchange Room of the Board of Trade?

A. I should have to be governed by the record of the case in the book.

Q. Mr. Stone don't you know that not ony of those men was expelled or suspended for anything that he had done on the floor of the Exchange Room of the Board of Trade at Chicago?

A. Don't I know that he was not?

1273 Q. Yes? A. No, I do not.

Q. Do you know that he was, any one of them, expelled for anything that he did on the floor of the Exchange Room of the Board of Trade?

A. I could not go beyond the fact that he was found by the Board of Directors guilty of the charges that were preferred against him; I don't recollect the details of all the—all the details of the evidence.

Q. Can you just as well answer the question?

The Master: Repeat the question, please.

(Question read as follows: "Do you know that he was, any one of them, expelled for anything that he did on the floor of the Exchange Room of the Board of Trade?")

The Master: Do you, or do you not know, that is the question.

A. Well, I know he was expelled for—

The Master: Read the question please.

(And thereupon the question last read was again read to the witness.)

A. Yes, I know that he was for doing some things on the floor of the Exchange.

Mr. Jenks: Q. Which one? A. I don't know which one.

Q. What?

A. I don't know what particular item, but I have—

Q. But which man?

A. The McLain's, I know that the McLains were, the two McLain's.

Q. What did they do there on the floor that they were expelled for? A. They violated the—

Q. What did they do?

A. They pretended to make trades and did not make them.

Q. Did not make them on the floor?

A. They pretended to make the trades on the floor and did not make them at all.

Q. And had not made them on the floor?

Q. Well let me—perhaps I don't make myself clear.

Q. Now Mr. Stone, you are an exceedingly smart man—

A. Oh no.

1274 Q. Don't you know that the McLain's were expelled for pretending outside that they had made trades on the floor of the Exchange Room, when they had not made such trades on the floor?

Mr. Jenks: Read that question to him. Answer yes or no.

(Question read.)

A. No sir, I do not.

Q. Was anybody ever expelled from membership in the Board or suspended to your knowledge, for making trades on the floor with other members, where he did not intend to receive and pay for or deliver the commodity dealt in, and for that reason was expelled or suspended?

A. Won't you please repeat that question?

(Question read.)

A. Well, I don't remember.

Mr. Jenks: You didn't read that question right; read it again.

(Question read.)

The Master: In other words to your recollection was any member of the Board ever expelled for that act?

Mr. Jenks: On the floor?

The Master: To your recollection?

A. Well, I can't say whether they were or not, whether that—

Mr. Jenks: That is all.

Redirect Examination

By Mr. Robbins:

Q. Mr. Stone you read into the record two resolutions of the Board of Trade, one on the 14th day of May, 1889, one on the 9th day of July, 1889. I will ask you whether those resolutions were in any way incorporated into the rules of the Board of Trade?

Mr. Jenks: I object to that question as not rebuttal, as incompetent and irrelevant and not re-examination of anything brought out by me on cross.

The Master: Your object is simply to show that they never appeared any place else.

1275 Mr. Robbins: He has made the answer and he has not included those. I want now to show whether they were of the same character. Mr. Jenks asked him whether all these resolutions that he read were included in the rules; he went over them and named them and left out those two. I call his attention to those two and ask whether or not those two were incorporated.

The Master: He may answer.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

A. They were incorporated in the rules.

Mr. Robbins: Q. And should have been included in your answer to Mr. Jenks' question?

Mr. Jenks: I object to the question for the same reason and also for the reason that it is a leading question.

The Master: Overruled.

To which ruling of the Master the defendant by its counsel then and there duly excepted.

[Q.] Yes sir.

Mr. Robbins: That is all.

The Master: The complainant closes their rebuttal and you have no sur-rebuttal, Mr. Jenks?

Mr. Jenks: What is that?

The Master: You have no sur-rebuttal.

Mr. Jenks: No.

The Master: And all testimony to be taken before the Master in Illinois, under the order of Court is closed.

Which was all of the evidence taken before the Master, under the order of Court herein, directing the Master to take evidence in Illinois.

1276 The opinion filed herein July 7, 1902, is in words and figures as follows:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain and Stock Company et al., Defendants.

Memorandum.

This is a suit to enjoin the Christie Grain and Stock Company and C. C. Christie from receiving or surreptitiously acquiring the quotations of the Chicago Board of Trade and to enjoin the telegraph companies from distributing or giving such quotations to them. The Christie Company and Mr. Christie make the defense in the case; the telegraph companies maintain a neutral attitude. The controversy between the parties is determinable by the solution of the two principal propositions stated at the argument.

Has the Board of Trade a property right in its quotations which may be protected in a court of equity?

Is the Board of Trade guilty of violating the penal laws of the State of Illinois in which it is domiciled, prohibiting the keeping of bucket shops, and are the quotations in question the result in a material degree of gambling transactions carried on with its acquiescence?

The conclusions arrived at will be briefly stated. The Board of Trade has at least a qualified property right in the records of the transactions between its members and in the distribution thereof. Such records constitute the quotations in controversy in this case. That the quotations are the subject of a property interest and that the complainant has some
1277 right with reference thereto is generally recognized by the decisions of the court. It is unnecessary to the case in hand to define the exact limitations of this property right,

or to ascertain the full extent of complainant's control over its quotations.

It is sufficient if it possesses a measure of ownership and control which justifies its attitude towards the defendants.

The quotations are results of transactions between the members of the Board of Trade upon the floor of an exchange hall owned by it and maintained at its own expense. They are gathered by its own employes. They possess a positive commercial value when instantaneously and continuously transmitted and distributed in the city of Chicago and throughout the country and are a source of substantial revenue to the complainant. It is conceded that no legal obligation rests upon the Board of Trade to gather and distribute the quotations. It may abandon the gathering and distribution of them while continuing the transaction of its usual business.

The complainant does not wholly deny the Christie Company and Mr. Christie the right to acquire and use the quotations but it has required the telegraph companies with whom it has contracted for their transmission and distribution, to first secure from every person desiring them a signed application, in which is embodied an agreement that the quotations shall not be used in the conduct of a bucket shop, and that they are for the private and individual use of the applicant and the business in which he is engaged. These conditions are well within the limits of a reasonable exercise of the right of property, and power of control over the quotations possessed by the complainant. The defendants, the Christie Company, and Mr. Christie, decline to comply with this requirement.

It is further contended by the resisting defendants
1278 that the continuous market quotations are of such a character, and the Board of Trade has so conducted itself with reference to the same, that they have become clothed with a public interest and that as long as it continues in the business of collecting and furnishing them to the public it must do so without unjust discrimination, as to persons, and must furnish them to all who may desire to obtain them for lawful purposes and upon the same terms and conditions.

Assuming that this contention is well founded, it is not clear that it helps the defendants in view of the fact that the conditions imposed by the Board of Trade are not unreasonable or prohibitive, and that acting through the telegraph companies, it applies them alike to all persons who desire the quotations for lawful purposes. But aside from this, I am of the opinion that courts cannot by their decrees assume the initiative in declaring private property to be impressed with a public use. There should first exist that condition of growth or expansion

of a private business or of its relation to the public service or public necessity, which justifies the assertion of a public interest therein, and the accompaniment of public control, followed by legislative recognition or declaration of such condition. The power to bring under governmental control the lawful business of individuals and private corporations not vested with the power of eminent domain, and who are not engaged in what by common acceptation is termed a public service, for the reason that such business through the enterprise and prudent management of its conductors has grown to be of great public interest and concern, is of the gravest and most momentous character. It is doubtful doctrine that in the absence of legislative action a suitor in a court of equity may be denied relief merely because the chancellor is of the opinion that his business, [original] private in its character, has grown to
1279 such magnitude that the public is entitled to an interest therein, and to a control thereof commensurate with that interest. When such a condition arises, the measure of the public control is limited by the extent of the public interest, and the making of regulations pertaining thereto is of legislative not judicial cognizance.

It is also urged in opposition to the granting of relief to the complainant, that it does not come into court with clean hands, in that it is engaged in the constant violation of the laws of the state of Illinois against the maintenance of bucket shops and that the quotations in controversy are the result of gaming ventures permitted to be transacted on its exchange.

While the evidence which has been presented gives rise to a suspicion that in very many of such transactions a delivery of the property bought or sold was not contemplated by any of the parties thereto, it is not sufficient to justify a general decree of outlawry against the Board of Trade and the business conducted by its members. The rules of that body expressly denounce the practice of dealing in differences on the fluctuations in the market price of any commodity and without a bona fide purchase and sale for actual delivery, and provide for the expulsion of offending members. These rules impose upon the seller the obligation to deliver the property sold, and upon the purchaser the obligation to receive it. Orders given by customers for execution on the exchange are understood to be executed according to the well settled rules and usages of the Board of Trade. All dealings between the members are required to be in conformity with such rules and usages.

The Supreme Court observed in Clews vs. Jamieson, 182 U. S., 461, 492: "Of course we do not say that these rules actually

prevent gambling on the exchange. It is possible, if
1280 not probable, that gambling may be and is in fact, carried on there, but it must be in violation of and not pursuant to the rules."

The evidence which has been adduced in this suit must be read in the light of the rule that contracts for the future delivery of a marketable commodity are presumptively valid and the burden of proof rests upon him who asserts the contrary. (Ponder vs. Cotton Company, 100 Fed. 373; S. C. 40 C. C. A. 416; Irwin vs. Williar, 110 U. S. 507; Clews vs. Jamison, supra). Moreover, it is not sufficient to invalidate a contract of that character that one of the parties never intended an actual delivery of the commodity bought or sold, but on the contrary contemplated a settlement of the transaction by the difference between the contract price and market value. The contract is valid if an actual transfer of the property is contemplated by at least one of the parties thereto. (Bibb vs. Allen, 149 U. S. 481).

Common experience justifies the observation that in the great majority of cases it is impossible to secure the requisite evidence of the gaming character of such transactions. And it is not competent to any finite being to search the minds of the participants and discover their purposes and intentions. A vast volume of legitimate business is admittedly transacted on the Exchange. The Board of Trade performs a most important function in the internal commerce of this country; in fact, of such importance and of such magnitude have its operations become that defendants are brought to the earnest contention that it is no longer a wholly private concern but is a quasi-public corporation and that its property has become affected with a public interest. It is obvious that this contention is not wholly consonant with the claim that it is maintaining what the law denounces as a bucket shop. A public interest cannot be predicated upon the results of violations of the law.

It is worthy of note, that although the laws of Illinois
1281 contain adequate provisions against gambling in such commodities as are dealt in on the exchange of complainant, and the keeping of places where such gambling is permitted, the courts of that state have refrained, so far as has been shown, from declaring the Chicago Board of Trade to be a bucket shop, and the evidence in this case does not warrant this court in making such a judicial declaration.

The complainant is entitled to a decree.

(Signed) WILLIAM C. HOOK,
July 5, 1902. Judge.

1282 United States of America, Sct.

I, Adelaide Utter, Clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignment of errors, and all proceedings in the cause wherein Board of Trade of the City of Chicago is complainant and Christie Grain & Stock Company et al., are defendants, as fully as the same appears on file and of record in my office, except the exhibits which are sent with this transcript.

Seal of the United States Circuit Court for the Western Division of the Western District of Missouri.

Witness my hand as clerk and the seal of said court. Done at office in Kansas City, Missouri, this 7th day of August, A. D. 1902.

ADELAIDE UTTER.

Filed Aug. 9, 1902. John D. Jordan, Clerk.

a United States of America—Set.

To The Board of Trade of the City of Chicago—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an order of appeal filed in the Clerk's Office of the Circuit Court of the United States for the Western Division of the Western District of Missouri, wherein Christie Grain and Stock Company and C. C. Christie are Appellants and you are Respondent, to show cause, if any there be, why the judgment and decree rendered against the said appellants as in said order of appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable William C. Hook, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this 26th day of March in the year of our Lord one thousand nine hundred three.

MILLIAM C. HOOK, Judge.

United States of America,
Western Division of the
Western District of Missouri—Set.

I hereby acknowledge due service of the within Citation this 26th day of March, A. D. 1903.

FRANK HAGERMAN,
Attorney for Defendant in Error.

United States Circuit Court, Western District of Missouri, Western Division. Board of Trade of the City of Chicago vs. Christie Grain and Stock Co. and C. C. Christie. Citation.
Filed Mar. 26, 1903. Adelaide Utter, Clerk.

1 United States of America—Set.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Be it remembered that heretofore, to-wit, on the 14th day of January, 1903, the same being a day of the regular November Term 1902, the cause wherein Board of Trade of the City of Chicago is complainant and Christie Grain and Stock Company et al. are defendants came on for final hearing, and after arguments of counsel, was submitted to the Court.

Afterwards, to-wit, on March 19, 1903, the Court filed an opinion herein, and on the 26th day of March, 1903 a decree was entered, in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri.

Board of Trade of the City of Chicago, Complainant.
vs.
Christie Grain and Stock Company, et al., Defendants.

Decree.

This cause coming on for final hearing upon the bill, amended answer of Christie Grain & Stock Company and C. C. Christie, and replication to said amended answer; and the defendants Western Union Telegraph Company, Gold & Stock Telegraph Com-
2 pany, and Postal Telegraph-Cable Company, having entered their appearance herein, but having failed to plead, answer or demur to said bill, as required by the rules of said Court, but being in default therein, and their said defaults being entered herein; and the Court having considered the stipulations of counsel, and the evidence taken herein (being the same stipulations and evidence upon which this Court heretofore granted a temporary injunction herein), and the court having heard the arguments of counsel, and being fully advised,

It is ordered, adjudged and decreed that the temporary injunction herefore entered herein be, and the same hereby is, made permanent; and that the defendants Christie Grain & Stock Company and C. C. Christie, and each of them, either acting in his or its own behalf, or as a member of any firm, or as an agent or officer of any other person, firm or corporation, and also each and every of the agents, employes and servants of each of said defendants, desist and refrain and be enjoined from receiving or acquiring, directly or indirectly, the continuous quotations of the complainant (by which is meant all quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes, or any of them, until they, or he, or the person, firm or corporation for which they, or any of them, shall be acting as agent, officer or employee, shall have first acquired the right to receive the said quotations by contract or purchase from complainant, or such telegraph company as shall lawfully have acquired from the complainant the right to sell or distribute its said market quotations: and from directly or indirectly using, giving away, posting, selling, or distributing said continuous quotations, and from aiding, abetting, or assisting any other person, firm or corporation in receiving, selling or distributing said market quotations, until the right to do so shall have been law-
3 fully acquired by said defendants, or other persons aforesaid.

It is further ordered, adjudged and decreed, that the complainant have and recover from the defendants Christie Grain and Stock Company and C. C. Christie it costs herein to be taxed by the clerk of this court, and in default of payment thereof by defendants, that execution issue therefor, pursuant to the practice of this Court.

(Signed) WILLIAM C. HOOK, Judge.

March 26, 1903.

Thereupon the defendants filed assignment of errors and petition for appeal. Said assignment of errors is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago, Complainant,
vs.
Christie Grain & Stock Company and C. C. Christie, Defendants.

Assignment of Errors.

Come now the defendants and file the following assignment of errors to the judgment of the trial court, and upon which they will rely for grounds of reversal on appeal in the above entitled cause.

I.

The Court erred in holding and decreeing that the complainant was entitled to any relief in this cause.

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II.

The Court erred in holding and finding that the complainant in this cause had any sufficient or substantial interests in the subject of the controversy sufficient to justify any relief in equity, and erred in refusing to hold that the complainant had no interest sufficient to justify any relief in the cause.

III.

The Court erred in holding and finding and was in error in permitting complainant to have any relief because there was no testimony of any kind showing or tending to show or which justified a holding or finding that the defendants were using or posting any of the quotations mentioned in the bill of complaint, until after they were first made public.

IV.

The Court erred in its decree and judgment in that under the undisputed evidence, the contract pleaded in the bill entered into between the Board of Trade and the Telegraph Companies was void

and was an unjust discrimination against the rights of the defendants and the public, and in not holding that said contract was beyond the power of the Board of Trade to make, and that it was beyond their power to undertake to sell the quotations to the telegraph companies and to bind the telegraph companies to discriminate and to submit to the Board of Trade the question as to who should or should not receive the same, for the reason that the market quotations were impressed with a public trust and were not the subject of barter or sale betwen the Board of Trade and the telegraph companies, and that even if they were the subject thereof, the contract was void as being an [unjust] discrimination against the defend-
5 ants and the public as to who should or should not receive the market quotations and was an unjust regulation against the defendants and the public, and beyond the power of the companies contracting thereto.

V.

The Court erred in granting the complainant any relief for the reason that said contract between the Board of Trade and the Telegraph Companies, set up and pleaded in the bill, pertained to and attempt to affect the question of interstate commercial relations and to affect the matter of interstate commerce, and as such and for that reason, it placed and attempted to place even if otherwise valid, an unjust and unwarranted limitation and embargo upon interstate commerce and was in direct conflict and violation of Section 8 of Article 1, of the Constitution of the United States.

VI.

That said contract between the Board of Trade and the teregraph Companies pleaded in the bill, was void and the Court erred in holding that the complainants were entitled to any relief thereunder for the further reason that said contract was wholly beyond the power and authority of the Board of Trade or Telegraph Companies to enter into, for the reason that the same was an attempt to enter into a private contract pertaining to a subject and subject-matter in restraint of contracts, and the free right to contract and in restraint of inter-state commerce, in violation of said provisions of the Constitution above cited.

VII.

The the Court erred in giving the complainant any relief because the contract made and entered into between the Board of Trade and the Telegraph Companies, pleaded in the bill and upon which the right of the complainant was founded, was
6 void and beyond the power of said parties to contract concerning, for the reason that the same violations of the anti-trust

act of Congress passed July 2nd, 1890, found in Volume 26, United States Statutes at Large, Page 209, Chapter 647, and as enunciated in the case of Addyston Pipe & Steel Co. vs. U. S., in the 175th volume of the United States Supreme Court Reports, Page 211, in that it was an attempt on the part of the parties thereto, to attempt to enter into private contract to limit, discriminate and control, as against the defendants and the public at large, the free and unlimited right to engage in interstate commerce and in interstate transactions, and to have and receive information in the state of Missouri, and was an attempt on the part of the contracting parties thereto, to control a subject of interstate regulation and interstate commerce, to the exclusive use and benefit of the complainant.

VIII.

The Court erred in holding that the complainant was entitled to any relief for the reason that the contract made and entered into between said complainant and the telegraph companies was void in that it undertook and prohibited the defendants and the public from receiving and having the market quotations upon the paying of reasonable charges therefor, and upon such terms as other parties like situated were receiving the same.

IX.

The Court erred in rendering a decree for the complainants because the said contract between the Board of Trade and the Telegraph Companies was ultra vires, and wholly beyond the authority or right of the parties to enter into, and was an attempt to control a subject of interstate commerce, and a subject in which the defendants and the public had an interest and a right.

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X.

The Court erred in granting the complainant relief for the reason that the contract between the Board of Trade and Telegraph Companies declared upon it in the bill, attempts to and does discriminate against who shall or shall not receive the market quotations brought into the state of Missouri over the public facilities, to-wit: over the telegraph lines, so long as the testimony shows that they were distributing to the public generally.

XI.

The Court erred in granting to the complainant any relief because the contract made and entered into between the Board of Trade and the Telegraph Companies undertakes to contract with reference to market quotations which are public property and is an

attempt on the part of the Board of Trade and the Telegraph Companies to unjustly discriminate against the public and against the grain dealers of the country, and is a written and avowed declaration and purpose on the part of the Board of Trade to control the entire grain market of the country and to prevent any and all persons from using or having the quotations of the grain markets unless such persons should either be a member of the Board of Trade of Chicago or agree to trade through and by its members only. And if sustained and enforced, places in the power of the Board of Trade, the complainant, to prevent any person or persons in the United States from having or receiving the market quotations, or knowing the condition of the public market, unless such parties pay tribute to the Board of Trade or its members.

XII.

The Court erred in finding for the complainant for the reason that the evidence and record shows that the Board of Trade, the complainant, upon application of the defendants, refused to allow them to receive the market quotations unless defendants would agree to place its deals and trade through the members of the Board of Trade, the complainant, and for that reason, also, the object and purpose of the contract was shown to be leveled against competition and is a contract permitting unjust discrimination.

XIII.

The Court erred in its finding and decree and in the opinion rendered upon which the decree is founded in that the market quotations which the complainant sought by the bill to prevent the defendants from using or having, were market quotations made under such circumstances and continued for so many years to be used without limitation by the public, that the same had become impressed with a public right, and a part of the community property of the country at large, and in holding and decreeing that the complainant was entitled to any exclusive property right therein as against the defendants and the public.

XIV.

The Court erred in finding for the complainant and entering the decree for the further reason that the testimony in the cause shows that the market quotations had been put into the channels of commerce for more than thirty years, and placed in the hands of the public without limitation, so that the business of the country had been accom-odated to and the grain relations of the country were regulated thereby, so that the same had become a part of the public property and impressed with a quasi-public trust, and hence, were not subject to control, discrimination or limitation, by the complain-

ant or the telegraph companies, and therefore were not the subject of control by either of said companies and in decreeing
9 that the complainants were entitled to any relief with reference to the limitation or qualification concerning the same, and in enjoining the defendants from the reasonable use thereof, as a part of the public.

XV.

The Court erred in entering the decree for the complainant for the reason that the testimony shows that said market quotations were impressed with a quasi-public trust and were brought into the state of Missouri and distributed to numerous other parties, residents of said state, and when brought into the state, they were within the control of the courts, enforcing obligations of common carriers, and public rights, without discrimination, and when so brought into the state, the defendants were entitled to the use thereof upon paying the telegraph company its reasonable charges therefor, and any attempt on the part of the Board of Trade or the telegraph Companies to control the same for the exclusive use or benefit of parties that the complainant, the Board of Trade, might direct, was wholly beyond the authority of either of said corporations, and therefore complainant was entitled to no relief.

XVI.

The Court erred in its judgment, decree and opinion, in holding that the market quotations could not be the subject of control by the courts until the legislature had manifested its intention to make them public property, for the reason that the public right always existed therein, and the right to enforce the right of the public and of the defendants thereto, exists in the courts independent of any action of the legislature.

XVII.

The Court erred in not holding, decreeing and finding that said market quotations were property impressed with a public
10 trust and right in its judgment and decree, in giving to the complainant, the right of discrimination and exclusive control pertaining thereto.

XVIII.

The Court erred in its decree, judgment and finding because said market quotations were impressed with a public right, and that the Board of Trade could not deprive the public of their right thereto, and in not holding and finding that the public and the defendants had a right to receive the same upon paying reasonable charges of the telegraph company for transmitting the same.

XIX.

The Court erred in its judgment and decree for the reason that the testimony did not show that the defendants were engaged in bucket-shopping, or violating the laws pertaining to bucket shops, and such being the fact, even if the Board of Trade and the Telegraph Companies had the right to contract pertaining thereto, the defendants were such parties as were entitled to the quotations in any event, notwithstanding they had refused to sign the contract and application provided for in the agreement between the Board of Trade and the telegraph companies, and being such parties, the Court erred in its order restraining the defendants from the use of the same.

XX.

The Court erred in rendering a decree for the complainants because under the evidence in the cause complainant was entitled to no relief in equity for the reason that they come into court with unclean hands in that the quotations which complainant sought to restrain and probihit the defendants from having or using,
11 were quotations made and permitted to be made and brought into existence at a place kept, maintained and fostered by the complainant, in violation of the statutory laws of the state of Illinois, and of the state of Missouri, and the complainants coming into court under such circumstances had no rights in the quotations which a court of equity should enforce.

XXI.

The Court erred in rendering the decree for the reason that the judgment and decree of the court goes entirely beyond and is not within the issues under the pleadings, in that it undertakes to and does not only prohibit the defendants from using or having the quotations for use in its business, but prohibits the defendants from even knowing or getting information pertaining to the market quotations and prohibits and enjoins them from having or possessing knowledge however received, and that it prohibits the defendants from allowing quotations with reference or pertaining to the Chicago market on the floor of the exchange, from passing over its wires, even though not used or offered or claimed to be used by defendants for the purpose of trading or dealing with its patrons or customers. And in that said decree prohibits the defendants from knowing or being advised of market quotations passing over their wires, or having information of what passes over their wires pertaining to quotations, even though they should never use or offer to use the same.

XXII.

The Court erred in not dismissing the complainant's bill for want of equity.

XXIII.

The Court erred in not dismissing the complainant's bill and in entering the decree in favor of defendants, because said bill was wholly insufficient in equity to entitle it to any relief.

12 XXIV.

The Court erred because under all the evidence in the cause the same presented no equity or cause for equitable interference.

XXV.

The judgment and decree of the court is erroneous because it is wholly unsustained by the testimony and is against the evidence and the weight of the evidence.

XXVI.

The Court erred in rendering its decree for the complainant because the undisputed evidence showed that the Board of Trade had wholly exceeded its power and authority under its corporation charter, in that its attempt to sell or traffic in market quotations with the telegraph companies was wholly foreign to the purpose of its incorporation, and for that reason its acts in entering into the contracts with the Telegraph Companies were ultra vires.

HARKLESS, O'GRADY & CRYSLER and
ROSSINGTON, SMITH & HISTED,
Attorneys for Defendant.

Said petition for appeal is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

13 Board of Trade of the City of Chicago, Complainant.

vs.

Christie Grain & Stock Company and C. C. Christie, Defendants.

Petition for Allowance of Appeal with Supersedeas.

The above named defendants, Christie Grain & Stock Company and C. C. Christie, conceiving themselves to be aggrieved by the order and decree made and entered in the above entitled cause on the 26th day of March, 1903, wherein and whereby said defendants Christie Grain & Stock Company and C. C. Christie, were enjoined from receiving or acquiring quotations of the Chicago Board of

Trade, do hereby appeal from said order and decree of the 26th day of March 1903, to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the Assignment of Errors filed herein and they pray that this appeal may be allowed and that the transcript of the record, stipulations and all proceedings herein be transmitted forthwith to the United States Circuit Court of Appeals for the Eighth Circuit, which shall have taken place or been had since the perfecting of the appeal heretofore taken to said United States Circuit Court of Appeals from the order of the Court granting the temporary writ of injunction in this cause.

HARKLESS, O'GRADY & CRYSLER
ROSSINGTON, SMITH & HISTED,
Solicitors for Defendants.

Thereupon, an order allowing appeal was filed in words and figures as follows, to-wit:

14 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Board of Trade of the City of Chicago, Complainant.
vs.
Christie Grain & Stock Company and C. C. Christie, Defendants.

Order Allowing Appeal and Supersedeas.

The above named defendants, Christie Grain & Stock Company and C. C. Christie, having duly filed their Assignment of Errors and petition for appeal on motion of Harkless, O'Grady & Crysler and Rossington, Smith & Histed, solicitors for said defendants, it is ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the order and decree heretofore filed and entered herein on the 26th day of March, 1903, be and the same is hereby allowed and that a certified copy of the transcript of the record, stipulations and all proceedings herein taking place since the perfecting of appeal heretofore taken from the judgment of the Court granting the temporary writ of injunction dated the 5th day of August, 1902, be forthwith transmitted to the said United States Circuit Court of Appeals and it is further ordered that there shall not be certified and sent to said Court of Appeals, any of the record, testimony or proceedings heretofore certified to the United States Circuit Court of Appeals for the Eighth Circuit on the appeal from the order and decree of the court on the temporary hearing of the injunction, for the reason that counsel have stipulated that the testimony heretofore introduced on the temporary hearing and

15 now on file and certified to the United States Circuit Court of Appeals for the Eighth Circuit, was to be used and taken

as the testimony on the final hearing and might be taken and considered as the testimony upon which the cause was to be heard in said Court of Appeals, both as to the temporary and final order for injunction and have stipulated that the testimony so certified and now on file in said Court shall be taken and considered as the same testimony introduced on the final hearing of this cause. The foregoing recitals and action had at the request of defendants. And I certify that the testimony now on file in said Court of Appeals and heretofore so certified, was the same testimony and none other that was introduced before me on the final hearing of the injunction.

It is further order- that the bond on appeal be fixed at the sum of three thousand dollars ($3000.00) the same to act as a supersedeas bond provided the transcript be filed with the clerk of the United States Circuit Court of Appeals for the 8th Circuit before April 1, 1903, and same shall act also as a bond for costs and damages on appeal.

Dated this 26th day of March, A. D. 1903.

(Signed) WILLIAM C. HOOK, Judge.

The Bond for appeal is in words and figures as follows:

United States of America—Set.

Know all men by these presents, that we, Christie Grain and Stock Company and C. C. Christie as principals and W. A. Michael as surety are held and firmly bound unto Board of Trade of the City of Chicago in the full and just sum of Three Thousand no/100 dollars to be paid to the said Board of Trade of the City of
16 Chicago, its successors, heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 26th day of March in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the November term of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in a suit depending in said court between Board of Trade of the city of Chicago and Christie Grain and Stock Company and C. C. Christie et al., defendants, a decree of permanent injunction was rendered against the said Christie Grain and Stock Company and C. C. Christie and the said Christie Grain and Stock Company and C. C. Christie have obtained an order of appeal of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Board of Trade of the City of Chicago citing and admonishing it to be and appear in the United States Circuit Court

of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Christie Grain and Stock Company and C. C. Christie shall prosecute said appeal to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

CHRISTIE GRAIN & STOCK CO. [Seal]
By C. C. Christie, Pres. [Seal]
C. C. CHRISTIE [Seal]
W. A. MICHAEL [Seal]

Signed and sealed in
presence of

.....

.....

The above bond is hereby approved and ordered to be filed and made a part of the record.

17 (Signed) WILLIAM C. HOOK, Judge.

United States of America,
Western District of Missouri—ss.

W. A. Michael obligor in the within bond being duly sworn, on his oath deposes and says that he resides as stated therein, and is worth over and above all his debts and liabilities the sum of ten thousand dollars; and that he owns ..... to that amount, subject to execution, in the state of .....

W. A. MICHAEL.

Subscribed and sworn to before me this 26th day of March, A. D. 1903. My term expires Sept. 15th, 1906.

[Seal] LENDRUM B. RIDGE,
Notary Public, Jackson County, Mo.

18 In the Circuit Court of the United States for the Western District of the State of Missouri.

The Board of Trade of the City of Chicago, Complainant.
vs.
Christie Grain and Stock Company, et al., Defendants.

Memorandum.

The only question of consequence presented at the final hearing which was not fully argued at the preliminary hearing is whether the arrangement between the Board of Trade and the Telegraph Companies is violative of the provisions of the Sherman Act (26 Stat. 209). This proposition may be roughly stated as follows:

The Board of Trade having a property right in its quotations contracted with the Telegraph Companies for their transmission and distribution by the latter, such transmission and distribution to be confined to persons who would sign an application embodying an agreement to the effect that the quotations should not be used in the conduct of an unlawful business, to-wit, a bucket shop. Is such an arrangement an unlawful combination in restraint of trade and commerce within the meaning of the act of July 2, 1890 popularly known as the Sherman anti-trust act? I am of the opinion that it is not.

Let a final decree be prepared in conformity with the above and the conclusions heretofore announced in this case.

(Signed) WILLIAM C. HOOK, Judge.

19 United States of America—Set.

I, Adelaide Utter, Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignment of errors and all proceedings in the cause wherein Board of Trade of the City of Chicago is complainant and Christie Grain & Stock Company et al. are defendants, since the making of the transcript certified by me in said cause Aug. 7, 1902, as fully as the same appears on file and of record in my office.

Seal of the United States Circuit Court for the Western Division of the Western District of Missouri.

Witness my hand as clerk and the seal of said court. Done at office in Kansas City, Missouri this 27th day of March, A. D. 1903.

ADELAIDE UTTER, Clerk.

Filed Mar. 28, 1903. John D. Jordan, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS,

Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of ppeals for the Eighth Circuit, do hereby certify that the foregoing rinted record of nine hundred seventy-three pages in the cases of hristie Grain and Stock Company, et al., Appellants, vs. Board of rade of the City of Chicago, No. 1805, and Christie Grain and tock Company, et al., Appellants, vs. Board of Trade of the City Chicago, No. 1911, was printed under my supervision and is entical with the printed record upon which said causes were heard nd decided in the Circuit Court of Appeals.

In Testimony Whereof, I hereunto subscribe my name and affix e seal of said Circuit Court of Appeals, at office in the City of . Louis, Missouri, in the Eighth Circuit, this eighteenth day of nuary, A. D. 1904.

JOHN D. JORDAN
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

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s and proceedings in the United States Circuit Court of
s for the Eighth Circuit, at the September Term, 1903,
rt, begun and held at the United States Court House in
Denver, Colorado, on the first Monday in September,
seventh day of September, A. D. 1903, and which said
Term, 1903, was adjourned from the City of Denver,
the City of St. Paul, Minnesota, as provided by law,
Honorable Walter H. Sanborn and the Honorable Willis
er, Circuit Judges, and the Honorable Oliver P. Shiras,
lge.

JOHN D. JORDAN
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

membered, that heretofore, a transcript of record, pur-
peals allowed by the Circuit Court of the United States
stern District of Missouri, was filed in the office of the
United States Circuit Court of Appeals for the Eighth
erein the Christie Grain and Stock Company, et al., were
and the Board of Trade of the City of Chicago was
hich said cause was docketed in said Circuit Court of
August 9, 1902, as No. 1805, and wherein the Christie
Stock Company, et al., were Appellants, and the Board
the City of Chicago was Appellee, which latter cause
d in said Circuit Court of Appeals on March 28, 1903,
1.

reafter an order was entered in said Circuit Court of
nsolidating the above causes.

r the filing and docketing of said appeals the following
were had in said Circuit Court of Appeals, to-wit:

pearance for Appellants).

he twelfth day of August, A. D. 1902, the appearance of
rkless, O'Grady & Crysler, as counsel for the appellants,
the Clerk's office of said Circuit Court of Appeals in
in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

No. 1805.

The Christie Grain and Stock Company, *et al.*,
Appellants,
vs.
The Board of Trade of the City of Chicago.

The Clerk will enter my appearance as Counsel for the Appellants.

JAMES H. HARKLESS,
JOHN O'GRADY,
CHAS S. CRYSLER.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1805. The Christie Grain and Stock Company, et al., Appellants, vs. The Board of Trade of the City of Chicago. Appearance. Filed Aug. 12, 1902. John D. Jordan, Clerk. James H. Harkless, John O'Grady, Charles S. Crysler, Counsel for Appellants.

(Appearance for Appellants).

And on the sixth day of November, A. D. 1902, the appearance of Messrs. Rossington, Smith & Histed, as counsel for the appellants, was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

No. 1805.

Christie Grain and Stock Company, *et al.*, *Appellants,*
vs.
The Board of Trade of the City of Chicago.

3 The Clerk will enter my appearance as Counsel for the Appellants.

W. H. ROSSINGTON,
CHAS. BLOOD SMITH,
CLIFFORD HISTED.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1805. Christie Grain and Stock Co., et al., Appellants, vs. The Board of Trade of the City of Chicago. Appearance. Filed Nov. 6, 1902. John D. Jordan, Clerk. W. H. Rossington, Charles Blood Smith, Clifford Histed, Counsel for Appellants.

(Appearance for Appellee).

And on the twenty-second day of September, A. D. 1902, the appearance of Mr. Frank Hagerman, as counsel for the appellee, was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

No. 1805.

Christie Grain and Stock Company, et al.,
Appellants,
vs.
The Board of Trade of the City of Chicago.

The Clerk will enter my appearance as Counsel for the Appellee.
FRANK HAGERMAN.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1805. Christie Grain and Stock Co., et al., Appellants, vs. The Board of Trade of the City of Chicago. Appearance. Filed Sep. 22, 1902. John D. Jordan, Clerk. Frank Hagerman, Counsel for Appellee.

(Appearance for Appellee).

And on the twenty-third day of September, A. D. 1902, the appearance of Mr. Henry S. Robbins, as counsel for the appellee, was filed in the Clerk's office of said Circuit Court of Appeals in
4 said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

No. 1805.

Christie Grain and Stock Company, et al., *Appellants,*
vs.
The Board of Trade of the City of Chicago.

The Clerk will enter my appearance as Counsel for the Appellee.

HENRY S. ROBBINS.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1805. Christie Grain and Stock Co., et al., Appellants, vs. The Board of Trade of the City of Chicago. Appearance. Filed Sep. 23, 1902. John D. Jordan, Clerk. Henry S. Robbins, Counsel for Appellee.

(Order continuing case generally).

And on the first day of December, A. D. 1902, in the record of the proceedings of said Circuit Court of Appeals is an entry in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

December Term, 1902.

Monday, December 1, 1902.

Christie Grain and Stock Company, et al.,
Appellants,
No. 1805 *vs.*
The Board of Trade of the City of Chicago.

Appeal from the Circuit Court of the United States for the Western District of Missouri.

This cause having been called for hearing in its regular order, argument was commenced by Mr. James H. Harkless for the Appellants, at the conclusion whereof it is ordered by the court that this cause be and the same is hereby continued until a final decree shall have been entered in the Circuit Court, with leave to use the printed record upon the present appeal in the preparation of the record upon an appeal from the final decree.

(Order of submission).

And on the third day of June, A. D. 1903, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

May Term, 1903.

Wednesday, June 3, 1903.

Christie Grain and Stock Company, et al., *Appellants,*
No. 1805 *vs.*
The Board of Trade of the City of Chicago.

Appeal from the Circuit Court of the United States for the Western District of Missouri.

The parties herein having filed a stipulation to submit this cause on briefs, it is now here ordered that the order entered June 2, 1903, be, and is hereby vacated and set aside, and thereupon, this cause with No. 1911, was taken by the Court as submitted on the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(Motion to consolidate with case No. 1911).

And on the twenty-fifth day of November, A. D. 1903, a motion to consolidate with case No. 1911, Christie Grain and Stock Company, et al., vs. Board of Trade of the City of Chicago, was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Eighth Circuit.

Christie Grain and Stock Company, et al.,
vs.
Board of Trade of the City of Chicago. } No. 1805.

6 Now comes the appellee, and suggests the omission to enter of record at the time of the submission of this case a formal order consolidating this case with case No. 1911, entitled Christie Grain and Stock Company, et al., appellants, vs. Board of Trade of the City of Chicago, appellee, pending in this court, and moves the court that this order be now entered nunc pro tunc, as of the third day of June, 1903.

HENRY S. ROBBINS,
Counsel for Appellee.

(Endorsed): No. 1805. Christie Grain and Stock Co., et al., Appellants, vs. Board of Trade of the City of Chicago. Motion to consolidate with case No. 1911, C. G. & S. Co., et al., v. B'd. Trade, etc. Filed Nov. 25, 1903. John D. Jordan, Clerk.

(Order of consolidation).

And on the fifteenth day of December, A. D. 1903, in the record of the proceedings of said Circuit Court of Appeals is an entry in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

December Term, 1903.

Tuesday, December 15, 1903.

Christie Grain and Stock Company, et al.,
No. 1805 *vs.*
Board of Trade of the City of Chicago.

Appeal from the Circuit Court of the United States for the Western District of Missouri.

It is hereby ordered, on motion of appellee, that this cause be, and the same is, consolidated with case No. 1911, entitled Christie Grain & Stock Company, et al., appellants, vs. Board of Trade of the city of Chicago, appellee, pending in this Court, and that this order be entered nunc pro tunc as of the third day of June, 1903.

December 15, 1903.

7 (Appearance for Appellants).

And on the fifteenth day of April, A. D. 1903, the appearance of Messrs. Harkless, O'Grady & Cryaler, as counsel for the appellants, was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

No. 1911.

Christie Grain and Stock Company, et al.,
Appellants,
vs.
The Board of Trade of the City of Chicago.

The Clerk will enter my appearance as Counsel for the Appellants.

JAMES H. HARKLESS,
JOHN O'GRADY,
C. S. CRYSLER.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1911. Christie Grain and Stock Co., et al., Appellants, vs. The Board of Trade of the City of Chicago. Appearance. Filed Apr. 15, 1903. John D. Jordan, Clerk. James H. Harkless, John O'Grady, C. S. Crysler, Counsel for appellants.

(Appearance for Appellants).

And on the fifteenth day of April, A. D. 1903, the appearance of Messrs. Rossington, Smith & Histed, as counsel for the appellants, was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

No. 1911.

Christie Grain and Stock Company, et al.,
Appellants,
vs.
The Board of Trade of the City of Chicago.

8 The Clerk will enter my appearance as Counsel for the Appellants.

W. H. ROSSINGTON,
CHAS. BLOOD SMITH,
CLIFFORD HISTED.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1911. Christie Grain and Stock Co., et al., Appellants, vs. The Board of Trade of the City of Chicago. Appearance. Filed Apr. 15, 1903. John D. Jordan, Clerk. W. H. Rossington, Charles Blood Smith, Clifford Histed, Counsel for Appellants.

(Appearance for Appellee).

And on the fifteenth day of April, A. D. 1903, the appearance of Mr. Henry S. Robbins as counsel for the appellee, was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

No. 1911.

Christie Grain and Stock Company, et al.,
Appellants,
vs.
The Board of Trade of the City of Chicago.

The Clerk will enter my appearance as Counsel for the Appellee.

HENRY S. ROBBINS.

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit. No. 1911. Christie Grain and Stock Co., et al., Appellants, vs. The Board of Trade of the City of Chicago. Appearance. Filed Apr. 15, 1903. John D. Jordan, Clerk. Henry S. Robbins, Counsel for Appellee.

(Stipulation to submit on briefs).

And on the third day of June, A. D. 1903, a stipulation to submit on briefs was filed in the Clerk's office of said Circuit Court of Appeals in said causes, Nos. 1805 and 1911, in the words and figures following, to-wit:

9 Kansas City, Mo., 2.

Hon. Walter H. Sanborn,
U. S. Circuit Court of Appeals,
St. Paul.

Impossible to get there, will submit on briefs and it can be so understood. Have wire..... Robbins Chicago to that effect.

JAS. H. HARKLESS,
W. H. ROSSINGTON.

Chicago, Ills., 3 June.

Hon. Walter H. Sanborn,
Judge United States Circuit Court
of Appeals,
St. Paul, Minn.

Harkless suggests submission on briefs. This satisfactory to me.
HENRY S. ROBBINS.

(Endorsed): 1805. Christie Grain & Stock Co., et al., Appellants, vs. Board of Trade of the City of Chicago. 1911. Christie Grain & Stock Co., Appellant, vs. Board of Trade of the City of Chicago. Stipulation to submit on briefs. Filed Jun. 3, 1903. John D. Jordan, Clerk.

(Order of Submission).

And on the third day of June, A. D. 1903, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

Eighth Circuit.

May Term, 1903.

Wednesday, June 3, 1903.

Christie Grain and Stock Company, et al.,
Appellants,
No. 1911 *vs.*
The Board of Trade of the City of Chicago.

Appeal from the Circuit Court of the United States for the Western District of Missouri.

10 The parties herein having filed a stipulation to submit this cause on briefs, it is now here ordered that the order entered on June 2, 1903, be, and the same is hereby vacated and set aside, and thereupon, this cause with No. 1805, was taken by the Court as submitted on the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(OPINION).

And on the eighth day of October, A. D. 1903, an opinion of said Circuit Court of Appeals was filed in said causes, Nos. 1805 and 1911, in the words and figures following, to-wit:

11 UNITED STATES CIRCUIT COURT OF APPEALS

Eighth Circuit.

No. 1805.—September Term, A. D. 1903.

Christie Grain & Stock Company and C. C. Christie, *Appellants,*
vs.
The Board of Trade of the City of Chicago, *Appellee.*

Appeal from the Circuit Court of the United States for the Western District of Missouri.

No. 1911.—September Term, A. D. 1903.

Christie Grain & Stock Company and C. C. Christie, *Appellants,*
vs.
The Board of Trade of the City of Chicago, *Appellee.*

Appeal from the Circuit Court of the United States for the Western District of Missouri.

Mr. James H. Harkless, Mr. John O'Grady, Mr. Charles S. Crysler and Mr. W. H. Rossington, Mr. Charles Blood Smith and Mr. Clifford Histed filed briefs for Appellants.

Mr. Henry S. Robbins filed brief for Appellee.

Before Sanborn and Van Devanter, Circuit Judges, and Shiras, District Judge.

Shiras, District Judge, delivered the opinion of the court.

On the 18th day of April, 1901, The Board of Trade of the City

of Chicago filed in the Circuit Court of the United States for the Western District of Missouri, a bill in equity against the Chris-
12 tie Grain and Stock Company, a corporation created under the laws of the State of Missouri, C. C. Christie, The Western Union Telegraph Company, The Postal Telegraph Cable Company, and the Gold and Stock Telegraph Company, the three companies last named being corporations created under the laws of the State of New York, the relief prayed for in the bill being the granting an injunction restraining the Christie Grain & Stock Company and C. C. Christie from receiving or surreptitiously acquiring from the Telegraph Companies, certain market quotations representing the dealings had on the Board of Trade in the City of Chicago, and restraining the Telegraph Companies from entering into any contracts with the Christie Company or C. C. Christie for the delivery to them of the quotations furnished the Telegraph Companies by the complainant.

As grounds for asking the relief prayed for it is averred in the bill that the complainant is a corporation created by a special charter granted by the Legislature of the State of Illinois, on the 18th of February, 1859, with authority "to maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and disseminate valuable commercial and economic information and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits"; that there are about eighteen hundred members of the Board of Trade; that the corporation has provided in the City of Chicago an Exchange building which cost upwards of $1,000,000; that there is provided within this building for the exclusive use of the members, an Exchange Hall, where many of its members meet every business day to buy and sell for themselves or as brokers for their customers, for present and future delivery, all kinds of grain and hog products, the value of said transactions aggregating many million bushels of grain and many million pounds of hog products annually, and having become so large that said Exchange is one of the great grain and provision markets in the United States; that such transactions are permitted only during market hours and by open viva voce bidding; that the knowledge of the prices thus made on said transactions during market hours upon the exchange have become a species of property of large value for which the Telegraph Companies are willing to pay large sums to The Board of Trade, in order that they may secure the same promptly, with the privilege of selling

the same to their customers; that on the 15th of April, 1901, the complainant entered into a written contract with the Western Union and Postal Telegraph Companies, whereby it agreed to furnish to the Telegraph Companies complete and continuous quotations of prices made in transactions between members of said Board of Trade in its Exchange Hall, the Telegraph Companies agreeing to pay a certain price therefor and also agreeing that they would not knowingly furnish or sell, directly or indirectly, the continuous quotations furnished them to any person, firm or corporation conducting a bucket shop or other similar place, where such quotations are used as a basis for bets or other illegal contracts, based upon the fluctuations of the prices of commodities dealt in on said Board of Trade, there being set forth in the written contract a form of application which the persons desiring to receive from the Telegraph Companies the quotations furnished by the Board of Trade were required to sign as a pre-requisite to obtaining the same; that the
13 Christie Grain and Stock Company and C. C. Christie doing business at Kansas City, Missouri, have not signed any such applications and have not entitled themselves to rightfully receive and use the designated quotations, but without right and surreptitiously have obtained and used these quotations to the great injury of the complainant and have demanded of the Telegraph Companies that they shall furnish the quotations to the said Christie Company without the latter signing the application prepared by the complainant or agreeing to its terms.

To this bill the Christie Company and C. C. Christie filed an answer and an amended answer, in which it is in substance claimed that the business transacted in the exchange hall of the Board of Trade is of a public nature and that the Christie Company, and all other parties engaged in dealing in grain and hog products are entitled to the knowledge and use of these quotations; that the Western Union Telegraph Company is a public corporation engaged in business as a common carrier and as such is under obligation to furnish these quotations, when sent over its wires, to any party desiring the same upon payment of the proper cost thereof; that the effort of the Board of Trade and of the Telegraph Company to limit the delivery of the quotations is in restraint of trade, and is a violation of the act of Congress known as the Sherman Anti-Trust Act; that the quotations sent out by the Telegraph Company are not the private property of the Board of Trade, in such sense that the Board of Trade can rightfully confine the knowledge thereof to such persons as will subject themselves to the terms of the application contracts; that such attempted restriction in the use of these quota-

tions tends to create a monopoly in the articles dealt with on the Board of Trade, and that the Board of Trade is not entitled to the aid of a court of equity in securing to itself the pecuniary benefit derived from the sale of the quotations because the same represent or grow out of transactions had in the exchange hall of the Board of Trade which are in violation of the statutes of the State of Illinois, and of the State of Missouri prohibiting any person or corporation keeping or causing to be kept any bucket shop, office or place wherein is permitted the pretended buying or selling, cotton, grain, provisions and other articles without any intention of receiving and paying for the property so bought, or of delivering the property so sold, or wherein is permitted the buying or selling of any such property on margins, it being further therein enacted that any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transactions, as aforesaid, shall be deemed an accessory and be liable to be fined and punished as provided for in the act.

The Telegraph Companies did not answer the bill and the questions at issue are those presented by the bill and the answers of the Christie Company and C. C. Christie.

A large amount of testimony was taken and the case was finally submitted to the circuit court upon the pleadings and proofs, which court found in favor of the complainant, granting it a decree as prayed for, the opinion of the court being reported in 116 Fed. 944.

From the finding and decree of the circuit court the Christie Company and C. C. Christie have appealed to this court, and counsel for the adversary parties have submitted the case upon full and elaborate briefs.

14 We deem it advisable to first consider the question whether the quotations of prices, which it is the purpose of the bill to prevent being delivered or furnished by the Western Union Telegraph Company to the Christie Company, grow out of transactions had in the exchange hall of the Board of Trade of such a nature that they come within the condemnation of the statute of Illinois, quoted in defendants' answer, the first and second sections of which are as follows:

"That it shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept within this state, any bucket shop, office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions

or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins; or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold; and the keeping of all such places is hereby prohibited. And any corporation or person, whether acting individually or as a member or as an officer, agent or employe of any corporation, association or co-partnership, who shall be guilty of violating this section shall, upon conviction thereof, be fined in any sum not less than $200 and not more than $500; and any person or persons who shall be guilty of a second offense under this statute, in addition to the penalty above described, shall, upon conviction, be imprisoned in the county jail for the period of six months, and if a corporation, shall be liable to forfeiture of its charter. And the continuance of such establishment after first conviction shall be deemed a second offense."

"It shall not be necessary, in order to commit the offense defined in section 1 of this act, that both the buyer and the seller shall agree to do any of the acts therein prohibited, but the said crime shall be complete against any corporation, association, co-partnership or person thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display, in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall be deemed an accessory, and, upon conviction thereof, shall be fined and punished the same as the principal, and as provided in section one of this act."

In *Soby vs. The People,* 134 Ill. 66, the Supreme Court of Illinois, in construing this statute, held as follows:

"In construing a statute the primary consideration is to ascertain and give effect to the legislative intention. In order to accomplish this object the court should look at the whole act, and seek to ascertain such intention by an examination and comparison of its various provisions. *Mason vs. Finch,* 2 Scam., 223; *People vs. Commissioners,* 3 Scam. 153; *Perteet vs. People,* 65 Ill. 230. The court may also consider other and prior acts relating to the same general subject, and thus ascertain what mischiefs the later legislation was designed to remedy, and the true spirit and import of such legislation. *Stribling vs. Prettyman,* 57 Ill. 371. By the Revised Crim-

inal Code of 1874, it was made a criminal offense to contract to have or give the option to sell or buy, at a future time, any grain or other commodity, etc., and it was provided that all contracts made in violation of such law should be considered gambling contracts, and should be void. It was held under that statute that even though a contract purported upon its face to be an absolute contract for the sale or purchase of grain or other commodity for future delivery, yet the transaction would be a gambling contract within the prohibition of the statute if the real intention of both parties at the time of making the contract was to deal only in options, and make future settlements upon the basis of the difference in the market price, without the actual delivery of the grain or other commodity sold or purchased. But it was also held under the same statute in numerous cases that if either party contracted in good faith, the contract was a valid and binding contract, no matter what might have been the secret intention of the other party. It is manifest that the object of the statute was to suppress and prevent gambling in grain and other commodities. But so great was the difficulty of establishing the unlawful intent of the parties making illegal contracts, so many were the shifts and devices resorted to for the purpose of concealing the true character of the gambling transactions entered into, that the statute was found to be ineffectual to accomplish the purpose for which it was enacted. It is a matter of common notoriety that, notwithstanding the highly penal character of the statute of 1874, the evil it was aimed at continued to increase with wonderful rapidity throughout the state, until in almost every city or town of any considerable importance, commission houses, offices, or agencies were established, in which the great bulk of the business transacted was the making of contracts which, while legitimate upon their face, were in fact mere gambling transactions which were never allowed to mature, but were uniformly adjusted before maturity upon differences in market price, and without any actual delivery of the articles which were the subject-matters of such pretended contract. To remedy the mischief, the legislature, satisfied with the futility of attempting to suppress gambling in grain and other commodities by striking merely at the gambling contracts themselves, and the parties entering into such contracts, has sought, by the statute of 1887, to suppress all bucket-shops, offices, stores, or other places, wherein gambling in grain or other commodities is conducted or permitted, and to do this by punishing by fine, imprisonment, or forfeiture of charter, any person, co-partnership, association, or corporation that keeps or causes to be kept a place of that character within the state, and also punishing by fine of not less than $500, nor

more than $1,000 the owner of any building who knowingly permits on his premises any of the illegal acts denounced by the statute. It would seem clear from the evidence that the plaintiff in error kept an office or place wherein was 'conducted or permitted' the buying or selling of grain or other produce on margins, 'without any intention of receiving and paying for the property so bought, or of delivering the property so sold', and wherein was 'conducted or permitted, the pretended buying or selling of such property on margins;' and where the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold.

"A consideration of the act will, as before indicated, show that it is directed against the keeping of any office or place, etc., first, wherein is conducted or permitted the pretended buying or selling of grain or other produce on margins, or otherwise, without any
16 intention of receiving the property bought, or delivering it if sold. Under this clause of the first section the offense consists in keeping the place, etc., where such buying or selling is conducted or permitted. That plaintiff in error kept the place or office is conceded, and that buying or selling upon margins without any intention on the part of the customer to receive the thing bought, or to deliver the thing sold, was permitted in such office or place so kept by the plaintiff in error, is also substantially conceded, and, if it were not, is abundantly proved. Under this provision of the act the keeper of such office or place, etc., cannot shield himself from criminal responsibility behind the fact that he made no inquiry of his customers. The statute is preventive in its character, and is aimed at the keeping of places where gambling in grain is permitted. The keeper must know that the transaction is not gambling, or in good faith have just reason to believe that the buying or selling is not within the intended prohibition of the statute. But if this were not so, there is abundant evidence in this record to show that the plaintiff in error knew that his customers did not contemplate an actual delivery of the commodity bought or sold. Again, the second clause makes it an offense to keep a place, etc., wherein is conducted or permitted the pretended buying or selling of such produce on margins. It is scarcely contended that the customer did not in fact intend only to purchase options, and to make money in the rise and fall of the markets without any expectation of receiving or delivering grain. In other words, it is too plain for argument that the buying and selling of grain was a mere pretense, at least so far as the customer was concerned. Again, the third clause creates the offense where the party buying such produce, or offering to buy the

same, does not intend actually to receive the same if purchased, or to deliver the same if sold. Here the proof established beyond question that purchases were made without any intention of receiving the commodity purchased. The only object was to make money on the fluctuations of the market by the pretended purchase of the grain on margins. * * * Nor can the fact that Lindbloom & Co., may have gone into the board of trade, and made like contracts of purchase or sale, avail plaintiff in error. As before said, the act is intended to prevent the keeping of places where gambling in grain is conducted or permitted. If the employers of plaintiff in error, in order to protect themselves, made, even in good faith, purchases or sales of like amounts of grain or produce, it would not change the nature of the transaction which had transpired between plaintiff in error and his customer, so as to free it from the taint of gambling, since, in respect of such customer, it would still be a mere gambling on margins—a mere speculating on the rise and fall of the market. It is apparent from the whole act, from the title to the concluding sentence, that the purpose and object of the legislature was to suppress the evil of gambling in produce. Primarily, it was intended to reach and suppress the bucket-shop and bucket-shopping, from which much of the evil sought to be corrected necessarily flows. But it is manifest that probably owing to the difficulty of securing conviction, where all the elements to constitute a bucket shop, or the practices of bucket-shopping, as the same have been defined in the decisions of the courts, are required to be established, the legislature saw proper to strike a fatal blow at both bucket-shops, and bucket-shopping, by prohibiting the keeping of all offices, places, etc., where gambling in grain and other produce is carried on or permitted. There can be no question but that the evil of gambling in futures was pres-
17 ent in the business carried on by plaintiff in error. There is in the evidence even just ground for the conclusion that it was present to all intents and purposes, as fully as if his office had been denominated a 'bucket-shop', instead of an 'agency' or a 'commission house'. The shifts and devices so easily and frequently resorted to for the purpose of giving to transactions tainted with gambling the semblance of legitimate deals were sufficient considerations in the legislative judgment to require as a matter of public policy that all places wherein is conducted or permitted the pretended buying or selling of property, such as is specified in the act, on margins or otherwise, shall be prohibited. If two firms, members of the board of trade, could be found, who were willing to enter into such a scheme, it is manifest that one firm representing agencies in half of the commercial centers in the state, and the other representing the other half, could buy or sell to fill the orders of their respective agents,

from each other receive the margins, and 'wring out their deals' without a bushel of grain or pound of any other commodity changing hands. Yet, if either demanded the grain or other product of the other, the contract would be so drawn as to be a valid sale and purchase of the produce itself; and they could without legal perjury testify that it was to be delivered, if desired by the party entitled to it under the contract. By such means the state would still be subject to all the evils of the bucket-shop and bucket-shopping.

"We are not permitted by the rules of construction to extend the body of the act by reference to its title, which is, 'An act to suppress bucket-shops, and gambling in stocks, bonds, petroleum, cotton, grain, provisions, and other produce', but we may consider it for the purpose of determining what was within legislative contemplation. *Perry Co. vs. Jefferson Co.*, 94 Ill. 214. The legislature by the fourth section, as we have seen, declares that it is the intention of this act to prevent, punish, and prohibit within this state the business now engaged in and conducted in places commonly known and designated as 'bucket-shops', and also to include the practice now commonly known as 'bucket-shopping', etc. To accomplish this purpose the legislature has prohibited the keeping of the places where what is commonly known as 'bucket-shopping' is carried on. They have not in the body of the act prohibited the keeping of bucket-shops, or the practice of bucket-shopping only, but have included the keeping of every place wherein is conducted or permitted the gambling in grain or other produce, and have expressly provided that it shall not be necessary, in order to commit the offense, that both the buyer and seller shall agree to do any of the acts therein prohibited. By the act the mere offer of the corporation, or person keeping such place, to make such pretended sale or purchase, whether the offer to sell or buy is accepted or not, renders the offense complete against such corporation or person. Such corporation or person is also prohibited from communicating, receiving, exhibiting, or displaying, in any manner, any such offer to buy or sell, or any statement or quotation of the prices of such property, with a view of any transaction of the kind prohibited. Moreover, as we have already seen, the person who knowingly permitted any of the acts prohibited by the statute in any house or place owned by him is subjected to heavy penalty. It is apparent, we think, that the legislature, for the purpose of carrying into effect their expressed intention of preventing the evils resulting from bucket-shops, and bucket-shopping, and to suppress the vice of gambling in grain and other produce, so detrimental to the interests and
18 welfare of the people, have determined to close, suppress, and prohibit the keeping of places where the practice of bucket-shop-

ping or gambling in such commodities is permitted. No other construction of the act would be consistent either with its letter or spirit. We are of opinion, that it is no longer possible in this state, under any shift or device, however specious, to keep an office or other place where parties may, under the pretence of buying or selling grain or other produce, engage in speculation in futures, and gamble upon the rise and fall of the market. * * *"

In *Clews vs. Jamieson*, 182 U. S. 461, 494, the Supreme Court of the United States, after a review of the ruling of the Supreme Court of Illinois, in the cases of *Pickering vs. Cease*, 79 Ill. 328; *Lyon vs. Culbertson*, 83 Ill. 33; *Tenney vs. Foote*, 95 Ill. 99; *Pearce vs. Foote*, 113 Ill. 228; *Cothran vs. Ellis*, 125 Ill. 496; *Schneider vs. Turner*, 130 Ill. 28; and *Soby vs. The People*, 134 Ill. 66, held that:

"These cases hold these various propositions:

"(1) That 'option contracts' to sell or deliver grain or other commodity, or railroad or other stock, which contracts are intended to be settled by payment of differences at the settling date, are invalid. 79, 83, 113 and 125 Ill., *supra*.

"(2) A contract to have or give to himself an option to sell or buy at a future time any grain, etc., subjects the party to fine or imprisonment, and all contracts made in violation of the statute are gambling contracts and void under section 130, Criminal Code, and all notes or securities, part of the consideration of which is money, etc., won by wager upon an unknown or contingent event, as described in section 131 of the code, are also void. 95 and 113 Illinois, *supra*.

"(3) An 'option contract' to sell or buy at a future time grain or other commodity or stock, etc., is void under the Illinois statute, even though a settlement by differences was not contemplated. 130 Ill., *supra*.

"(4) The keeper of a shop or office where dealing is carried on in stock, etc., on margins, without any intention of delivering articles bought or sold, is guilty of an offense under the Illinois act of 1887. 134 Ill., *supra*."

The construction thus placed upon the state statute by the Supreme Court of Illinois is binding upon this court, not only as a construction of the statute of the state, but also as declaratory of the public policy of the state with respect to the character of the business that may be lawfully carried on within the borders of the state by the Chicago Board of Trade and other kindred organizations. *Wade vs. Travis Co.*, 174 U. S. 499; *Hartford Fire Ins. Co. vs. Railway Co.*, 175 U. S. 91.

It is thus authoritatively settled that under the statutes of the state of Illinois, it is unlawful for any person or corporation to keep or furnish an office or place wherein persons may, under the pretense of buying or selling grain or other produce engage in speculating in futures and in gambling upon the rise or fall of the market and every person and corporation is prohibited from communicating or receiving any statement or quotation of prices with a view to aiding in the carrying on of the prohibited gambling transactions.

Of the nature of the business carried on by the members of the Board of Trade there can be no question under the evidence submitted in this case. The testimony of the President of the Board, William S. Warren, and of a large number of the members of 19 the Board was taken for the purpose of showing the character of the transactions had upon the floor of the exchange hall and there is absolute unanimity in their evidence to the effect, that much the larger part of these transactions were deals wherein it was not expected or understood that there would be any delivery of the article nominally dealt in, but the same were carried through and settled by methods clearly devised to avoid the need of actual delivery.

The estimates of the witnesses vary as to the percentage of the transactions in which actual delivery was contemplated or had, running from one to fifteen per cent, thus proving that at least eighty five and more probably ninety five per cent of the transactions would come under the condemnation of the Illinois statute. We do not deem it necessary to set forth the details of this testimony, which can be found in the opinion of Judge Thompson in the case of *The Board of Trade of the City of Chicago vs. O'Dell Commission Co.*, 115 Fed. 574.

In that case and in *Board of Trade vs. Donovan Commission Co.*, 121 Fed. 1012, upon consideration of substantially the same evidence submitted in this case, the conclusion was reached that over ninety per cent of the transactions had on the floor of the exchange hall maintained by the Chicago Board of Trade were purely gambling transactions.

It is thus proven beyond all reasonable question that the Chicago Board of Trade maintains in the building owned by it in the City of Chicago, a place known as The Exchange Hall, wherein the members of the Board, acting for themselves, and also as brokers for outside parties, engage in making and carrying through deals in grain and provisions, in which it is not intended to make a future delivery of the article nominally dealt in, but which are to be settled by the payment of money only according to the fluctuations of the market and which are in all essentials gambling transactions.

It further appears that the continuous quotations sent out by the Board of Trade are quotations of the prices bid and paid in connection with these speculative transactions had on the floor of the exchange.

It further appears that the Board of Trade for a specified price paid to it, furnishes these quotations to the Telegraph Companies, and authorizes them to send the same over their wires for delivery to all persons who will agree to take them under the terms fixed by the Board of Trade, these quotations being thus furnished by the Board of Trade and sent out over the lines of the Telegraph Companies as a means of encouraging speculation in futures and in gambling upon the rise and fall of the market, and for the purpose of bringing to the members of the Board of Trade as large a part of this speculative business as can be possibly secured.

As already shown, the statute of Illinois, as construed by the Supreme Court of that state, absolutely forbids any person or corporation from keeping an office or place wherein gambling in grain or other produce is permitted, or from communicating or receiving any quotations of prices of such property with a view to encourage or aiding in gambling transactions in such property.

The evidence clearly establishes the fact that the Chicago Board of Trade maintains, in its exchange hall, a place wherein transactions coming within the inhibition of the statute are permitted and carried on and the preparation and sending out of the continuous quotations of prices, based upon these forbidden transactions, are intended to aid its members, as well as outsiders, in engaging in speculative gambling on the rise and fall of the market, and therefore in both these particulars the Board of Trade violates the plain provisions of the statute.

The purpose of the bill filed in this case is to invoke the aid of the court, as a court of equity, in securing to the Board of Trade, the pecuniary benefit derived from the communication and sale of quotations derived from transactions conducted by it in open violation of the statutes of the state, in which it maintains its place of business, and to which state it owes its corporate existence. The powers of a court of equity cannot be successfully invoked for such a purpose. It will not lend its aid to the furtherance of transactions expressly forbidden by the statute and thus declared to be contrary to the public policy of the state wherein the transactions are had.

In seeking the aid of the court, under the circumstances developed in the evidence introduced in this case, the Board of Trade does not come with clean hands nor for a lawful purpose and for these reasons its prayer for aid must be denied.

The conclusion thus announced relieves the court from the need of considering the other questions arising on the record and which have been very fully presented in the briefs of counsel.

The decree appealed from is reversed, and the case is remanded to the Circuit Court with instructions to dismiss the bill upon the merits at cost of the appellee.

Filed October 8, 1903.

21 (DECREE).

And on the eighth day of October, A. D. 1903, in the record of the proceedings of said Circuit Court of Appeals is a decree in said causes, Nos. 1805 and 1911, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

September Term, 1903.

Thursday, October 8, 1903.

Christie Grain and Stock Company and C. C. Christie, *Appellants,* vs. The Board of Trade of the City of Chicago. No. 1805	Appeal from the Circuit Court of the United States for the Western District of Missouri.
and	
Christie Grain and Stock Company and C. C. Christie, *Appellants,* vs. The Board of Trade of the City of Chicago. No. 1911.	Appeal from the Circuit Court of the United States for the Western District of Missouri.

Appeal from the Circuit

These causes came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of Missouri, and were argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and

decreed by this Court, that the decree of the said Circuit Court, in these causes, be, and the same is hereby, reversed with costs; and that the Christie Grain and Stock Company and C. C. Christie, have and recover against The Board of Trade of the City of Chicago, the sum of Thirteen Hundred Sixty Three and 05/100 Dollars for their costs in this behalf expended and have execution therefor.

It is further ordered that these causes be, and the same are hereby, remanded to the said Circuit Court with directions to dismiss the bill of complaint at the cost of the Appellee, The Board of Trade of the City of Chicago.

October 8, 1903.

22 (MOTION TO CONSOLIDATE WITH CASE NO. 1805.)

And on the twenty-fifth day of November, A. D. 1903, a motion to consolidate with case No. 1805, Christie Grain and Stock Company, et al., vs. Board of Trade of the City of Chicago, was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Eighth Circuit.

Christie Grain and Stock Company, et al
vs.
Board of Trade of the City of Chicago. } No. 1911.

Now comes the appellee, and suggests the omission to enter of record at the time of the submission of this case a formal order consolidating this case with case No. 1805, entitled Christie Grain and Stock Company, et al, appellants, vs. Board of Trade of the City of Chicago, appellee, pending in this court, and moves the court that this order be now entered nunc pro tunc as of the third day of June, 1903.

HENRY S. ROBBINS,
Counsel for Appellee.

(Endorsed): No. 1911. Christie Grain & Stock Co., et al., Appellants, vs. Board of Trade of the City of Chicago. Motion to consolidate with case No. 1805, C. G. & S. Co., et al., vs B'd. Trade, etc. Filed Nov. 25, 1903. John D. Jordan, Clerk.

(PETITION FOR REHEARING.)

And on the twenty-seventh day of November, A. D. 1903, a petition for rehearing was filed in said causes, Nos. 1805 and 1911, in the words and figures following, to-wit:

23 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Eighth Circuit.

Christie Grain & Stock Company et al.,
Appellants,
vs.
Board of Trade of the City of Chicago.
Appellee.

PETITION FOR REHEARING.

To the Honorable the Judges of the Circuit Court of Appeals of the Eighth Circuit:

This court decides that appellee cannot maintain this suit to protect its quotations, because most of the *transactions*, from which the quotations result, are illegal, and appellee, by permitting them upon its exchange, violates a criminal statute of Illinois.

A rehearing is asked because this decision seems to us to conflict with that of the Supreme Court in

Brooks v. *Martin*, 2 Wall., 70-79.

24 In that case two persons had joined in the purchase of soldiers' claims, which was prohibited by act of Congress. These illegal *transactions* had resulted in money in the hands of one of the parties, and the other, Martin, filed a bill to get his share of it, and the court sustained the bill. Observe the similarity of that case to this. There money, here quotations, resulted from alleged illegal transactions. This news is, like money, property, and as such has legitimate use and value. The Supreme Court allowed Martin, despite his conduct in the transactions, to assert in equity his right to, and property in, the money, while this court refuses appellee the right to sue to protect its property in its quotations. If, as this court holds, appellee violated a statute, so did Martin. If the *transactions* soiled the hands of appellee, so did they those of Martin.

The same principle is given effect in

Planters' Bank v. *Union Bank,* 16 Wall., 483-499,

where it was held that, though a contract for the sale of confederate bonds was illegal, the proceeds of such sale could be recovered from one who had made it.

Again, this decision that appellee cannot sue in Missouri, because it has violated a criminal statute of Illinois seems erroneous, because it in effect gives to such statute an extra-territorial effect. It is well settled by the authorities that "the penal laws of a country do not reach, in their effect, beyond the jurisdiction where they are established."

Thus, in

Commonwealth v. *Green,* 17 Mass., 514, 540,

it was held that the conviction of an infamous crime in another state did not render a witness incompetent, PARKER, C. J., saying:

"To refuse a man the rght to be a witness on account of a conviction in another country, would be to suffer that conviction to have force here, and, in some measure, to carry it into execution."

The Supreme Court has approved this case and held the same way in

Logan v. *United States,* 144 U. S., 263, 303.

Why should an infraction of a foreign criminal statute incapacitate a party when it does not a witness?

In

State v. *Pelican Insurance Co.,* 127 U. S., 265, 289,

the Supreme Court refused to sustain a suit by a state upon a judgment recovered by it for a penalty arising out of a violation of its municipal laws, saying:

"By the law of England and of the United States, the penal laws of a country do not reach beyond its own territory, except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the courts of another country."

In *The Antelope,* 10 Wheat., 66, 123, Chief Justice MARSHALL said:

"The courts of no country execute the penal laws of another."

A case in point here is

Folliott v. *Ogden,* 1 H. Blackst., 123, 135,

where it was held that an attainder in another country, depriving one of his property, did not prevent him from suing on a bond in England, it being said that "the penal laws of foreign countries are strictly local."

Under these authorities it would seem clear that, if corn were manufactured into whiskey in Dubuque, contrary to a criminal
26 statute of Iowa, and the whiskey were transported to Illinois, it would there be a legitimate subject of commercial intercourse, being "so recognized by the usages of the commercial world" (*In re Hahrer*, 140 U. S., 545-556), and the Illinois court could not properly deny the manufacturer a right to sue for the protection or recovery of his property. Otherwise an extra-territorial effect would be given to the Iowa liquor law, contrary to the principle of the foregoing cases. This would be especially true of such a statute, because the act it prohibits is not generally deemed a crime. The offense is a purely statutory one, expressive of the peculiar public policy of one or two states only.

Of the same character is a statute making it criminal to maintain a commercial exchange, where are permitted transactions in which the parties do not intend delivery. If the Chicago Board of Trade were located in Minneapolis this court would not refuse it a right to sue, because Minnesota has no such statute. When, therefore, this court refuses to protect appellee in the ownership of its quotations, because the transactions violate an Illinois criminal statute, it in effect gives an extra-territorial effect to that statute.

If, therefore, the clean hands doctrine is otherwise applicable—which we deny (see original brief)—it is limited by the principle here announced, and violations of the penal statute of another state cannot make a complainant's hands unclean.

II.

The basis of this court' decision is its construction of the bucket-shop statute of Illinois. A reconsideration of that question is sought, because we believe this court has misconstrued that statute.

27 This question becomes the more important, because Missouri has re-enacted this Illinois statute, and there are now in Missouri two exchanges—the St. Louis Chamber of Commerce and the Kansas City Board of Trade—where the character of the business is the same as upon appellee's exchange. The result of this court's decision, if not recalled, must, therefore, be to deny to each of these exchanges access to the federal courts of this circuit for the protection of its property.

This statute has never been construed by the Illinois courts as respects its applicability to appellee and other like commercial ex-

changes. *Soby* v. *The People,* referred to in the opinion, had reference to a broker's office, and under the rule for the ascertainment of the proper scope of an authority, the language used in that case should be limited by the facts and the issue there presented.

As said in *Carroll* v. *Lessee of Carroll et al.,* 16 How., 275, 286,

"If the construction put by the court of a state upon one of its statutes was not a matter in judgment, if it might have been decided either way without affecting any right brought into question, then, according to the principles of the common law, an opinion on such a question is not a decision. To make it so, there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties and decide to whom the property in contestation belongs."

This statute is to be construed not merely by resorting to its language, but the general public policy of the state and its other legislation should also be considered.

The public policy of Illinois has been to encourage the maintenance of appellee's exchange.

The commercial history of the world has demonstrated that exchanges are essential to the highest development of commerce.
28 Amesterdam as early as 1670, Frankfort before the last century, Vienna in 1771, Paris as early as 1549, London as early as 1762, Berlin before the reign of Frederick the Great, and New York as early as 1817, each had its exchange, thus emphasizing the fact that no great financial or commercial center exists without one.

As early as 1848 the great future of the grain trade of the northwest was foreseen, and the necessity for an exchange in Chicago to facilitate that trade was apparent. The Chicago Board of Trade was first established as an unincorporated association. In 1849 the Illinois legislature passed a general statute providing for the incorporation of boards of trade, with such powers as are usual in the management and conduct of such institutions. (Gross' Stat. of Ill., p. 116). The members of the unincorporated association organized a corporation under this general act, and continued to exist thereunder until 1859, when, its usefulness to the commerce of the state being demonstrated, the Illinois legislature granted its present charter (see original exhibit, copy of rules), thereby incorporating "the persons now composing the Board of Trade of the City of Chicago" into the present corporation.

Sections 4 and 12 of that chapter are as follows:

Sec. 4. "The said corporation is hereby authorized to establish such rules, regulations and by-laws for the management of their

business, and the mode in which it shall be transacted, as they may think proper."

Sec. 12. "Said corporation shall have no power or authority to do or carry on any business, excepting such as is usual in the management of Boards of Trade, or Chambers of Commerce, or as provided in the foregoing sections of this bill."

The legislative intent is thus apparent to sanction in Chicago a corporation, with full power to maintain a commercial exchange
29 for the transaction of such business as is, or should become, "usual" in the management of boards of trade or chambers of commerce. In passing this state the legislature knew the proper office of an exchange to be to furnish facilities for the easy and economical exchange of commodities, and intended by section 12 that this exchange should have all the powers necessary to maintain itself as an up-to-date exchange, and be able to compete successfully with rival exchanges of other cities for the grain trade of the northwest. This charter is not limited in duration, but is a perpetual one.

About 1880 (Rec., 920, 921) the instrument known as the "ticker" was perfected, whereby the news of prices prevailing upon an exchange could be automatically and instantly transmitted and widely disseminated. This gave rise to the bucket-shop, a place where people assemble to bet with the proprietor upon the fluctuations of prices on an exchange, as the same are posted upon a blackboard in such shop. This evil at once assumed such proportions that the Illinois legislature realized the necessity of a law for its suppression. The bucket-shop statute of 1887 was the result.

That statute and the previous one granting appellee its charter are to be construed together. The later act is not to be so construed as to nullify the former, unless this is the necessary inference of the legislative intent. The first act established a corporation with perpetual life and granted it power to maintain an exchange for the transaction of such business as might be "usual in the management of boards of trade or chambers of commerce." The second act contemplates a *forfeiture of the charter* of every corporation within its terms, if the offense therein defined is continued after a first conviction. Can it be fairly claimed that the Illinois legislature,
30 in passing the act of 1887, contemplated the termination of the charter of this exchange, which plays so important a part in the commerce of the state? If such had been its purpose, would it not have used language more plainly indicating such intention? The nature of the business upon appellee's exchange, in 1887, was then generally known to be the same as it is now. The legislature

then knew that the facilities, which this exchange afforded, unavoidably gave rise to much speculation. Is it not plain that the act of 1887 was intended to reach, not this large commercial exchange, but offices maintained by bucket-shop keepers and brokers? Indeed, the legislature has, it seems to us, so declared in saying (Sec. 4):

"It is the intention of this act to prevent, punish and prohibit, within this state, the business now engaged in and conducted in places commonly known and *designated as bucket-shops,* and also to include the practice now commonly known as bucket-shopping *by* persons, corporations, associations, or copartnership, who ostensibly carry on the business or occupation of *commission merchants or brokers* in grain, provisions, petroleum, stocks and bonds."

Appellee is clearly not within either of these classes. It conducts no business at all. It makes no transactions, as do bucket-shops and brokers.

Thus, when the conditions surrounding the passage of these two acts are considered, it should be, we think, apparent that the legislature had no intention of including appellee within the act of 1887.

Such has been the practical construction placed upon the statute by the courts and public officials of Illinois ever since its passage. This statute requires (Sec. 4) that every grand jury should be specially charged to investigate violations of this act. Such has been the practice in Chicago ever since its passage; yet never
31 has it occurred to anyone to indict this appellee, nor has public sentiment thought juries or officials derelict for not doing so.

Under these circumstances, should a federal court in another state impose upon this statute a construction that it does not receive in Illinois?

III.

We also ask a reconsideration of the question of fact whether, assuming the statute to apply to appellee, this record shows a violation of it.

The opinion of this court says that these quotations are "furnished by the Board of Trade and sent out over the lines of the Telegraph Companies as a means of encouraging speculation in futures and in gambling upon the rise and fall of the market, and for the purpose of bringing to the members of the Board of Trade as large a part of this speculative business as can be possibly secured," and that "the preparation and sending out of the continuous quotations of prices, based upon these forbidden transactions, are intended to aid its

members, as well as outsiders, in engaging in speculative gambling on the rise and fall of the market." Neither in the pleadings nor in the evidence is there warrant for these statements. The answer does not aver such to be the fact, and if it did, no evidence was introduced to prove it. The only legitimate inference upon this subject from this record is that appellee collects these quotations for the purpose of realizing $30,000 a year from them. Thus this court is in error in saying that appellee violates that part of the statute of 1887 which prohibits the communicating of any quotations "with a view" to transactions in which delivery is not contemplated.

32 The opinion further says (italics ours):

"There is absolute unanimity in their evidence to the effect, that much the larger part of these transactions were deals wherein it was not *expected or understood* that there would be any delivery of the article nominally dealt in, but the same were carried through and settled by methods clearly devised to avoid the need of actual delivery.

The estimates of the witnesses vary as to the percentage of the transactions in which actual delivery was *contemplated* or had, running from one to fifteen per cent.," etc.

Not a single witness testified as to the *intentions* of the parties in a single trade; not a single witness undertook to give his estimate of the percentage of transactions in which actual delivery was *contemplated.* All that the testimony did show was that the larger portion of the transactions were not in fact closed by actual delivery. It was upon this, and upon nothing else, that the witnesses, one and all, gave their estimates of percentage. If "much the larger part of these transactions" are to be held gambling, this conclusion must be deduced solely from the fact that in these delivery is not in fact made.

The burden of proving the absence of intention to deliver is upon the party alleging it. (*Clews* v. *Jamieson,* 182 U. S., 461, 490.) An individual transaction would not be adjudged invalid upon proof merely that the property had not been delivered.

Take, for illustration, a single one of the transactions forming the business of the Armour Company, as testified to by Mr. Marcy. (Rec., 109, 119.) It buys 5,000 bushels of cash wheat in the country, and, under its method of doing business (and that of all the other cash grain dealers), it at once proceeds to *find an assured place* for that wheat by immediately selling in appellee's wheat pit an equal quantity of wheat for future delivery. Under all the
33 authorities this contract is legal, unless *at the time it was made* the Armour Company did not intend to deliver the wheat. No

one testified to this, either as to a single one of these transactions, or as to the transactions considered as a whole. Mr. Marcy testified clearly that his company did not make a future sale until it had purchased a like amount, and that the grain thus purchased in the country is brought to Chicago, is graded, and is then delivered upon these contracts, unless, when it gets to Chicago, it does not come up to the grade required for such delivery, or unless, intervening the making of the purchase in the country and the time of delivery under the sale, some one is willing to pay more for this grain than can be made by delivery upon the future sale. Now, it is perfectly plain that, when the Armour Company sells the wheat in the pit, it does not know that the wheat purchased in the country will *not* grade so as to be deliverable. Inspection does not take place until it gets to Chicago, and it is only when so inspected and found not up to grade that the Armour Company for this reason determines not to deliver it upon its future sale. If this were the only element resulting in an intention not to deliver, would anyone contend that such intention, thus created, invalidates the contract? Certainly not, because this intention is not present when the contract is made, but arises subsequently.

Now, assuming that this grain reaches Chicago and comes up to grade, and an exporter offers the Armour Company more than can be made by delivery upon its contract of sale, and the Armour Company *then* concludes to avail itself of this opportunity to profit. Does this intention, thus formed, not to deliver this grain upon the previous sale for future delivery invalidate the contract? Certainly not, because such intention is formed *after* the sale is made and for a legitimate reason.

34 If this single transaction does not contain the illegal intent not to deliver, and is valid, how can it be claimed that all the transactions of like character of this company are illegal? If the transactions, considered singly, cannot be condemned as illegal, how can the business, treated as a whole, be so condemned? If, as respects a single transaction, the fact that a sale is not completed by actual delivery does not prove the illegal intent not to deliver, how can it be said that the aggregate of such transactions is illegal, merely because in a large portion of them delivery is not in fact made? Yet such is the decision of this court.

The evidence shows the future trading by the Armour Company to be exclusively of this class, and to aggregate in one year 50,000,000 bushels of sales in appellee's pits, and that some of these transactions, involving 9,718,000 bushels, or about twenty per cent., were completed by *actual* delivery, the balance being necessarily

closed out by counter purchases for future delivery in these same pits, because *after* the sales were made, the Armour Company conceived the intention not to deliver, for the reason that the grain was not up to grade, and therefore could not be deliverable, or because subsequent to selling in the pits it found that it was able to dispose of the grain more profitably elsewhere. Wherein does that part of this 50,000,000 bushels of sales for future delivery, which did not result in actual delivery, differ as respects legality from the sale of the 9,718,000 bushels thereof, which were actually delivered? *The intention was the same at the time the transactions were made.*

This shows the error of adjudging illegal, as this court does, all these sales for future delivery by the Armour Company which were not completed by delivery.

35 As pointed out in our original brief, all other grain buyers resort to this future selling in the same way that the Armour Company does. Practically all grain brought to Chicago is thus hedged against upon appellee's exchange. Chicago receives nearly 300,000,000 bushels a year. Much grain so bought by Chicago grain buyers in the country and hedged against is subsequently diverted to other markets. Much grain is hedged against more than once. Thus no accurate estimate of the volume of this kind of business can be made.

It is further shown by the undisputed evidence that this method of business (Rec., 114) has become an essential part of the business of these grain dealers, and that by resorting to it a saving of from three to six cents a bushel is made in the merchandising of the grain, thus permitting higher prices to the producer and lower prices to the consumer.

Is there, then, any justification either from a legal, commercial, or moral, standpoint, for declaring these hedging sales invalid? Is it reasonable to suppose that the Illinois legislature intended to prohibit these trades by this bucket-shop statute, when to do so would drive the cash grain business from Chicago to other markets, and render appellee incapable in a large measure of accomplishing the purposes for which it was chartered?

We therefore respectfully submit that this court has erred in holding, as its decision does, that this class of future transactions is illegal.

If these hedging transactions are legal, the entire future trading on appellee's exchange cannot be condemned; for there is no way of ascertaining what percentage of it consists of these hedging contracts.

36 But even if the greater part of this trading is illegal as between the traders, does it follow that appellee is guilty of vio-

lating this statute? It is a criminal statute, to be construed strictly, and appellee cannot be held to violate it unless guilty of some intentional wrong-doing. As it conducts no business of its own and becomes a party to no transactions, the only provision of this statute, which can apply, would be that which aims to prevent the keeping of a place where transactions without intention to deliver are *permitted*. The word "permitted" must imply the intentional doing of something that the party could reasonably prevent.

The purely speculative transactions are not distinguishable from the others. They are alike in form, made in the same way, and to outward appearances are the same. If the appellee were to constantly surround its pits with official watchers they could not distinguish the one kind of contract from the other. What distinguishes the transactions is the *intention* of the parties. But how can appellee ascertain what is in the minds of the traders or their customers? Is it not, then, apparent, when the actual situation upon appellee's exchange is understood, that nothing short of the prohibition of *all* contracts for future delivery would prevent speculation? If, then, the legislature intended this statute to apply to this exchange, it must be held to have contemplated a prohibition of all time-trading thereon.

But the State of Illinois has evinced no intention to prohibit all contracts for future delivery in order to stop illegal speculation, and in view of the recent experience of Germany in this direction (see article in Century Magazine, September, 1903), is not liable to do so. It doubtless appreciates that all speculation can no more be suppressed, than can all drinking, and that whatever may be its moral aspects, speculation has upon these exchanges a distinct
37 commercial value. This time trading, as fully explained in the final report of the United States Industrial Commission, Vol. 6, pp. 5, 23, 28, 29, 189-192, 223 and 224, Vol. 19, p. 185, 186, is an essential part of the distributive system by which the crops are marketed. That these grain buyers may sell for future delivery, there must be others there willing to buy for future delivery. The presence of these latter creates a market—and the more of them there are the broader is this market—which, meeting and absorbing these hedging sales, carries the grain (to the advantage of producers and consumers), from the time the farmers sell it in the fall until it is absorbed during the year by the consumers.

As the State of Illinois permits future trading *off* the exchanges, is it to be supposed that its legislature intended by this bucket-shop statute to stop such trading upon appellee's exchange?

Finally, the ultimate and practical question in this case should not

be lost sight of. Appellee has entered upon a plan—whose feasibility has already been demonstrated—to deprive bucket shops of its quotations. Other exchanges, the New York Cotton Exchange, and the Milwaukee and Minneapolis Chambers of Commerce, are now imposing the same restrictions upon their quotations. While this will not remove all the evils incident to exchanges—and no candid person will deny there are such—it will, if pursued, destroy the greatest one, the bucket shop evil.

If, on the other hand, the decision of this court shall become the final law in this extensive litigation, the efforts of these exchanges to control their quotations in a manner that will promote public welfare will be entirely frustrated. It will make the bucket shop a *permanent* evil.

38 Should the courts construe a statute, passed for the professed purpose of suppressing bucket-shops, so as to perpetuate them?

For the foregoing reasons, we respectfully ask a rehearing of this case, and, in view of the importance of the question involved, that counsel may be afforded an opportunity for an oral argument, as the case was not orally argued.

HENRY S. ROBBINS,
Counsel for Appellee.

I, Henry S. Robbins, counsel for appellee herein, do hereby certify that in my judgment the foregoing petition for rehearing is well founded, and the same is not interposed for delay.

HENRY S. ROBBINS.

(Endorsed): Filed Nov. 27, 1903. John D. Jordan, Clerk.

39 (Order of Consolidation).

And on the fifteenth day of Decemer, A. D. 1903, in the record of the proceedings of said Circuit Court of Appeals is an entry in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

December Term, 1903.

Tuesday, December 15, 1903.

Christie Grain and Stock Company, et al.,
No. 1911. *vs.*
Board of Trade of the city of Chicago.

Appeal from the Circuit Court of the United States for the Western District of Missouri.

It is hereby ordered on motion of appellee, that this cause be, and the same is, consolidated with case No. 1805, entitled Christie Grain & Stock Company, et al., appellants, vs. Board of Trade of the city of Chicago, appellee, pending in this Court, and that this order be entered nunc pro tunc as of the third day of June, 1903.

December 15, 1903.

(Motion for Stay of Mandate).

And on the eleventh day of January, A. D. 1904, a motion for stay of mandate was filed in the Clerk's office of said Circuit Court of Appeals in said causes, Nos. 1805 and 1911, in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Eighth Circuit.

Christie Grain and Stock Company, *et al*
Appellants,
vs.
Board of Trade of the city of Chicago,
Appellee.
} No. 1805.

40 Christie Grain and Stock Company, *et al,*
Appellants,
vs.
Board of Trade of the city of Chicago,
Appellee.
} No. 1911.

And now comes the appellee, and informs the court of its purpose to apply to the Supreme Court of the United States for a *certiorari*, and moves the court for an order herein staying the issuance of mandates herein until the further order of the court.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HENRY S. ROBBINS,
Counsel for Appellee.

(Endorsed): United States Circuit Court Appeals, Eighth Circuit. 1805 and 1911. Christie Grain and Stock Company, et al., vs. Board of Trade of the City of Chicago. Motion for order staying Mandate. Filed Jan. 11, 1904. John D. Jordan, Clerk. Henry S. Robbins, Home Insurance Building, Chicago.

(Order Denying Petition for Rehearing).

And on the eleventh day of January, A. D. 1904, in the record of the proceedings of said Circuit Court of Appeals is an order denying the petition for rehearing in said causes, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

December Term, 1903.

Monday, January 11, 1904.

Christie Grain and Stock Company, *et al.*, *Appellants,*
Nos. 1805 and 1911. *vs.*
The Board of Trade of the City of Chicago.

Consolidated appeals from the Circuit Court of the United States for the Western District of Missouri.

41 This cause came on this day to be heard upon the petition for a rehearing filed by Counsel for the Appellee.

On Consideration Whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause be, and the same is hereby denied.

January 11, 1904.

(Order Staying Mandate).

And on the eleventh day of January, A. D. 1904, in the record of the proceedings of said Circuit Court of Appeals is an order staying the issuance of the mandate in said cause, in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

December Term, 1903.

Monday, January 11, 1904.

Christie Grain and Stock Company, *et al.*, *Appellants,*
Nos. 1805 and 1911. *vs.*
Board of Trade of the City of Chicago.

Consolidated appeals from the Circuit Court of the United States for the Western District of Missouri.

The above consolidated causes came on to be heard upon the motion of counsel for Appellees for an order staying the mandate herein.

On Consideration Whereof, it is now here ordered by this Court, that the mandate in this cause be, and the same is hereby, stayed for a period of sixty days from and after this date, pending an application, by counsel for Appellee, to the Supreme Court of the United States for a writ of certiorari herein.

42 (Clerk's Certificate).

UNITED STATES CIRCUIT COURT OF APPEALS.

Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing forty-one pages contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of said Circuit Court of Appeals (except the transcript of record from the Circuit Court of the United States for the Western District of Missouri), in certain consolidated causes in said Court wherein the Christie Grain and Stock Company, et al., are Appellants, and the Board of Trade of the City of Chicago is Appellee, Nos. 1805 and 1911, as full, true and complete as the originals of the same now remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Circuit Court of Appeals, at office in the City of St. Louis, Missouri, in the Eighth Circuit, this eighteenth day of January, A. D. 1904.

JOHN D. JORDAN
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[SEAL]

In the United States Circuit Court of Appeals, Eighth Circuit.

BOARD OF TRADE OF THE CITY OF CHICAGO, Petitioner,
vs.
CHRISTIE GRAIN AND STOCK COMPANY and C. C. CHRISTIE, Respondents.

It is hereby stipulated that the certified transcript heretofore made by the clerk of the circuit court of appeals, and filed on application for *certiorari* in the Supreme Court, may be taken as a return to the writ of *certiorari* issued by the Supreme Court in the above entitled case.

HENRY S. ROBBINS,
Counsel for Petitioner.
JAS. H. HARKLESS,
CHAS. S. CRYSLER,
CLIFFORD HISTED,
W. H. ROSSINGTON,
CHAS. BLOOD SMITH,
Counsel for Respondents.

(Endorsed:) United States circuit court of appeals, eighth circuit. Nos. 1805 & 1911. Christie Grain and Stock Company, *et al.*, appellants, *vs.* Board of Trade of the City of Chicago. Stipulation as to return to writ of certiorari. Filed May 9, 1904, John D. Jordan, clerk. Henry S. Robbins, Home Insurance building, Chicago.

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing contains a full, true and complete copy of the stipulation as to return to writ of certiorari in the cases of Christie Grain and Stock Company, *et al.*, appellants, *vs.* Board of Trade of the City of Chicago, Nos. 1805 and 1911, consolidated, as full, true and complete as the original of same remains on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in St. Louis, Missouri, this ninth day of May, A. D. 1904.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] U. S. circuit court of appeals eighth circuit. Nos. 1805 and 1911. Christie Grain and Stock Company, *et al.*, appellants, *vs.* Board of Trade of the City of Chicago. Certified copy of stipulation as to return to writ of certiorari.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Being informed that there is now pending before you suits in which Christie Grain and Stock Company and C. C. Christie are appellants and The Board of Trade of the City of Chicago is appellee, Nos. 1805 & 1911, which suits were removed into the said circuit court of appeals by virtue of appeals from the circuit court of the United States for the western district of Missouri, and we, being willing for certain reasons that the said causes and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said causes, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Return to Writ.

UNITED STATES OF AMERICA, *Eighth Circuit,* } *ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the cases of Christie Grain and Stock Company and C. C. Christie, appellants, *vs.* The Board of Trade of the City of Chicago, Nos. 1805 and 1911, consolidated, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said causes.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in St. Louis, Missouri, this ninth day of May, A. D. 1904.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals
for the Eighth Circuit.

[Endorsed:] File No. 19,299. Supreme Court of the United States. No. 224, October term, 1904. The Board of Trade of the City of Chicago, *vs.* Christie Grain & Stock Co., & C. C. Christie. Writ of certiorari and return. Filed Apr. 30 1904 John D. Jordan, clerk. Filed May 11, 1904.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Petitioner,

vs.

CHRISTIE GRAIN AND STOCK COMPANY and C. C. CHRISTIE,
Respondents.

PETITION FOR CERTIORARI.

To the Honorable, the Judges of the Supreme Court of the United States:

The Board of Trade of the City of Chicago respectfully represents unto your Honors:

That it is a corporation created by special charter granted by the State of Illinois, under which it is authorized to conduct, and for more than forty-six years has been conducting, a commercial exchange in Chicago; that during certain market hours of each business day during said period products of the farm have been bought and sold by its members within its exchange hall, and the volume of such transactions is, and has been, such that said exchange has become the largest grain and

provision market in the United States; that certain portions of such exchange hall, commonly known as "pits," are specially set apart for trading in wheat, corn, oats and provisions, respectively.

That about the year 1880 certain improvements were made in telegraphic facilities for disseminating market news, whereby every change in the prices of grain and provisions in said "pits" could be electrically transmitted with such promptness that the making of the prices upon the exchange and the display of the quotations in offices of dealers throughout the country were practically simultaneous. (Rec., 6.)

That this distribution of petitioner's quotations is of great value to legitimate commerce and enables farmers and country grain dealers to avoid being overreached in the sales of their products.

That for some years prior to August, 1900, petitioner allowed certain telegraph companies without charge to collect such quotations upon its exchange floor, and imposed no restrictions upon their sale thereof, and this, and similar conduct of other commercial exchanges, gave rise to a large and increasing number of bucket-shops.

That a bucket-shop is a place where its proprietor posts upon a blackboard the market quotations of leading commercial exchanges, and stands ready to make bets with all comers upon the course of such blackboard prices, each "trade" being opened at the last quotation then on the blackboard; and being closed at the last quotation on the blackboard at the time of closing. A "margin" is exacted from each customer, and when this is exhausted, according to the blackboard price, the so-called "trade" is at an end. The keeper takes out of each trade an arbitrary profit, miscalled a commission, which enables him to profitably assume the

risk incident to the fluctuations of the market, such risk being present for him only to the extent that the so-called purchases of his customers exceed in the aggregate their so-called sales, or *vice versa*. *Thus these quotations are essential to the existence of all bucket-shops.*

That by reason of this misuse of its quotations, petitioner, about August 1, 1900, adopted a new policy whose objects were (1) to prevent the use of its quotations by bucket-shops, and (2) to enable petitioner to derive revenue from its quotations; and to that end petitioner after said date exacted from the four telegraph companies to which it thereafter furnished its quotations, contracts in which they severally agreed that they would not sell said quotations to any bucket-shop and would exact from every person to whom they sold the same a written agreement that he would neither use said quotations in conducting a bucket-shop nor allow them to be taken from his office. (Rec., 10-18.)

That in said contracts said telegraph companies agreed to pay, and have since then paid, to petitioner for its said quotations sums which now give petitioner a yearly revenue of over $30,000, petitioner on its part agreeing to take all reasonable steps to prevent persons from purloining such quotations.

That being thus unable to purchase said quotations from the telegraph companies, many of the bucket-shops (and others acting in their interests) at once commenced to systematically steal said quotations by tapping the wires of the telegraph companies, over which they were passing; and thereby an illicit trade in such quotations was inaugurated and is maintained, thus to a large extent defeating the purpose of petitioner to prevent the use of its quotations by bucket-shops, and endangering its revenue from such quotations.

That thereupon petitioner instituted suits in equity in many of the federal courts in the central West, including the present suit, to protect its property right in these quotations and prevent the purloining thereof.

That the Federal Court at Chicago (Judge Kohlsaat) decided that petitioner had a property right in its quotations, and enjoined certain persons, in said suit made defendants, from stealing such quotations (105 Fed., 794), and this decision was affirmed by the Circuit Court of Appeals of the Seventh Circuit. (56 C. C. A., 205; 119 Fed., 301.) That the result of those decisions was that, whereas there were on August 1, 1900, twenty-seven bucket-shops in Chicago posting petitioner's quotations, there are now none, thus demonstrating that it is practicable for petitioner and other exchanges to entirely prevent the use of their quotations in bucket-shops.

That the suit at bar is a bill in equity filed by petitioner against these respondents (Rec., 3-22), wherein said contracts between petitioner and said telegraph companies are set out, and it is averred that these respondents had not signed contracts with the telegraph companies entitling them to receive these quotations, but were purloining, posting, and otherwise using the same at their place of business at Kansas City; that respondents filed an answer averring (among other things) that said quotations grew out of trades in the exchange hall of petitioner which were gambling transactions, and that petitioner, in maintaining such exchange hall, was keeping a bucket-shop contrary to a criminal statute of Illinois entitled "An Act to suppress bucket-shops and gambling in stocks, bonds, petroleum, cotton, grain, provisions or other produce," approved June 6, 1887; that petitioner filed exceptions to said answer upon the ground that such averment constituted no defense in law to said

suit; that these exceptions were overruled, and much proof was thereafter taken in support of said averment, and upon final hearing in said Circuit Court, his Honor, Judge Hook, decided that such defense was not established by the evidence and granted petitioner, first an interlocutory, and subsequently a permanent, injunction. (See opinions, Rec., 956, 972.)

That thereupon respondents perfected, first an appeal from the interlocutory order, and subsequently an appeal from the final decree, to the Circuit Court of Appeals of the Eighth Circuit, where said two appeals were consolidated (Rec., 1015), and that court decided that said quotations grew out of transactions for future delivery between petitioner's members, which were in all essentials gambling transactions, and that by reason thereof petitioner violated said criminal statute of Illinois, and did not come into court with clean hands, nor for a lawful purpose, and on this ground said Court of Appeals reversed said decree of said Circuit Court with instructions to dismiss said bill upon the merits. (See opinion, Rec., 990.)

That thereafter petitioner filed its petition for rehearing, which was, on the 11th day of January, 1904, denied.

That a similar suit was instituted by petitioner in the Federal Court at Indianapolis against certain persons there purloining said quotations, and in said suit the same defense was interposed, and in support thereof practically the same evidence was introduced, as in the present suit; that upon appeal of said suit to the Circuit Court of Appeals of the *Seventh* Circuit, said court has recently decided in favor of this petitioner (thus in effect declining to follow said decision of the Circuit Court of Appeals of the Eighth Circuit), and directed the entry of a decree in favor of petitioner, thus

creating, as between the Circuit Courts of Appeals of the Seventh and Eighth Circuits, a direct conflict of decisions. (See its opinion at the end of petitioner's brief filed in support of this application.)

That other similar suits have been brought by petitioner, and are still pending, in the federal courts at Cincinnati, Minneapolis, Grand Rapids, Detroit, Indianapolis and Buffalo, and there are also pending appeals in two similar cases in the Circuit Court of Appeals of the Eighth Circuit; that in each of these cases the same defense has been interposed and the same question arises as in the case at bar.

That it is also the purpose of petitioner to institute from time to time other similar suits in the federal courts of other districts and circuits, for the purpose of protecting its property right in its quotations against purloiners, and in these also, the same defense will doubtless be interposed and the same question will arise.

That respondents (as do others in the same kind of business) have private telegraph wires connecting their principal office with numerous branch offices located in other states, and over these wires transmit such stolen quotations to such branch offices, and that, should petitioner in said Eighth Circuit be adjudged not entitled to decrees to protect its said quotations, the defendants in such suits could, and undoubtedly would, establish numerous branch offices within the other federal circuits and use therein such stolen quotations, even though the courts of such other circuits should decide in favor of petitioner's right to protect its quotations from purloiners.

That said criminal statute of Illinois, after the sections thereof quoted in the opinion of the Circuit Court of Appeals of the Eighth Circuit (Rec., 993) provides in the 4th section thereof as follows:

"It is the intention of this act to prevent, punish and prohibit, within this state, the business now engaged in and conducted in places commonly known and designated as bucket-shops, and also to include the practice now commonly known as bucket-shopping by persons, corporations, associations, or co-partnerships, who ostensibly carry on the business or occupation of commisison merchants or brokers in grain, provisions, petroleum, stocks and bonds,"

thus confining that statute, as petitioner is advised by counsel, to a prohibition of two things: (1) the keeping of a bucket-shop; and (2) the practice of bucket-shopping by persons who ostensibly act as brokers or commission merchants. That petitioner does neither of these things; that it neither as principal nor as broker makes any trades or transactions; that it only maintains an exchange hall, where others trade.

That it is also provided in said criminal statute of Illinois as follows (Sec. 4):

"And it shall be the duty, under this act, of all the judges of the several circuit courts in this state, and of the judges of the criminal court of Cook county, at every regular term thereof, to charge all regularly impanelled grand juries to make due investigation and report upon all violations of the provisions of this act."

And that, although said statute has been in force since 1887, it has never been decided by any court of Illinois, nor any public official charged with the enforcement of that criminal statute, that petitioner was within the class of persons contemplated by such statute; nor has any indictment ever been rendered against petitioner under that statute.

That, as the evidence shows, a large part of the trading for future delivery upon petitioner's exchange is by grain buyers, whose purpose is, not to assume the risk of, in order to profit by, the fluctuations of the market, but who, when they buy grain in the country, always sell, from time to time,

a like quantity upon petitioner's exchange for future delivery; that a large part of the grain so bought is not actually delivered upon these future sales (1) because some of such grain, when it reaches Chicago, does not come up to the required grade so as to be deliverable upon such sales, and (2) because such grain dealers can frequently make more profit by selling the actual grain elsewhere for export or consumption, instead of delivering it upon such future sales, and that in either of such cases, such grain dealers are then obliged to, and do, close out their time sales by making corresponding time purchases; that this practice is called "hedging," and forms an essential part of the present scheme of crop distribution, in which the members of all the principal grain and cotton exchanges participate, and by thus eliminating risk from fluctuations of prices these middlemen are able to take smaller profits and the producers get better prices. That this "hedging" is shown by the evidence to be extensively resorted to also by elevator owners, millers and packers.

That the Circuit Court of Appeals of the Eighth Circuit has in this case adjudged the transactions upon petitioner's exchange in which deliveries are not in fact made, *including these hedging transactions*, gambling transactions; that it does so solely by reason of the fact that such transactions are not in fact closed by deliveries; and that this decision, if not reversed, is calculated to bring into discredit, and place a stigma upon, the many merchants connected with the grain and cotton exchanges of the country who participate in the business of marketing the crops, and injure them in their business; and it will also create in the minds of many people throughout the country an unfounded and unjust prejudice against such exchanges and their members.

That said Circuit Court of Appeals also based its decision in part upon the proposition that said quotations were fur-

nished by petitioner to the telegraph companies as "a means of encouraging speculation in futures and in gambling," but that neither in the pleadings nor in the evidence is there any support for this proposition.

That said decision, if not reversed, will not only in said Eighth Circuit wholly defeat, but will in the other federal circuits seriously embarrass, petitioner's efforts to safeguard, and prevent an improper use of, its quotations.

That petitioner is advised by counsel that said defense so interposed by respondents, and held to be valid by said Circuit Court of Appeals, is neither sufficient in point of law, nor supported by the evidence in this record; that your petitioner verily believes that the legality of the said transactions occurring upon its exchanges, and the right of petitioner, and other exchanges similarly situated, to resort to the federal courts for the protection of their property, are questions of such gravity and importance, that they ought to be decided by this court, and that a *certiorari* should also issue in order that said conflict of decisions between the Circuit Courts of Appeals of the Seventh and Eighth Circuits may be removed, and the federal law on this subject be rendered uniform.

That petitioner presents herewith and makes a part of this petition a certified transcript of the record of this cause in said Circuit Court of Appeals.

Wherefore your petitioner prays that this court issue a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Judicial Circuit, directing it to certify to this court a record of its proceedings in said cause.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HENRY S. ROBBINS,
Its Solicitor.

HENRY S. ROBBINS,
Of Counsel.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

George F. Stone, being first duly sworn, deposes and says that he is secretary of the petitioner, Board of Trade of the City of Chicago; that he has read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact, except as to those matters therein stated to be upon information and belief, and as to those, he believes said petition to be true.

GEORGE F. STONE.

Subscribed and sworn to before me this 12th day of April, A. D. 1904.

MARTIN HOWARD FOSS,
Notary Public.

[NOTARIAL SEAL.]

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1908.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Petitioner,

vs.

CHRISTIE GRAIN AND STOCK COMPANY and C. C. CHRISTIE,
Respondents.

BRIEF ON MOTION FOR CERTIORARI.

The question that this application seeks to have this court review, is:

Whether the federal courts should refuse to entertain suits by the Chicago Board of Trade and other commercial exchanges similarly situated to prevent bucket-shops and others from stealing their market *quotations*, upon the ground that most of the *transactions* between the *members* in the exchange hall are gambling transactions.

This general question is divisible into three:

(1) Is it, in point of law, a good defense to such a suit brought in a federal court in one state, that complainant violates a criminal statute of *another* state by maintaining therein an exchange hall where its members trade extensively without intending delivery?

(2) Is any commercial exchange or board of trade included within this criminal statute of Illinois passed "to suppress bucket-shops and gambling in stocks, grain, provisions, or other produce"?

(3) If so, are the transactions between petitioner's members gambling transactions to such an extent that petitioner, by maintaing an exchange hall where they are made, violates that statute?

All of these questions the Circuit Court of Appeals of the Eighth Circuit decided against the petitioner (see opinion, Rec., 990), and reversed a decree entered in its favor by Judge Hook (see opinions, pp. 956, 972) on a bill in equity brought by petitioner to protect its quotations from purloiners. A similar result will follow in three other like suits pending in the same circuit, if this writ is denied. Thus, this decision closes the doors of the federal courts of the Eighth Circuit against this petitioner, at least in this class of suits, and when followed in other circuits, will close the doors of federal courts against it in numerous suits now pending, and to be brought by petitioner, to protect its property in its quotations.

The Circuit Court of Appeals of the *Seventh* Circuit has recently declined to follow this decision of the Circuit Court of Appeals of the *Eighth* Circuit, and in a case similar to the one at bar has directed a decree in favor of this petitioner. (See its opinion printed at end of this brief.)

A writ of *certiorari* is here sought upon the grounds—

(1) Of a conflict of decisions in the Circuit Courts of Appeals of the Seventh and Eighth Circuits; and

(2) That the questions here involved are of such gravity and importance, and their decision of such consequence to commerce and commercial exchanges, as to justify their review by this court. There would seem to be authority for this case in *Clews* v. *Jamieson*, 182 U. S., 461, where this court reviewed, and reversed, upon *certiorari*, a decision declaring time trading upon the Chicago Stock Exchange gambling.

I.

IS IT A DEFENSE TO A SUIT BROUGHT BY A COMMERCIAL EXCHANGE IN A FEDERAL COURT IN ONE STATE TO PROTECT ITS MARKET QUOTATIONS, THAT IT VIOLATES A CRIMINAL STATUTE OF ANOTHER STATE IN MAINTAINING AN EXCHANGE HALL WHERE ITS MEMBERS MAKE TRANSACTIONS, IN WHICH THE INTENTION TO DELIVER IS ABSENT?

This suit was brought in *Missouri* and was dismissed by the Circuit Court of Appeals solely by reason of a supposed violation by complainant of a criminal statute of *Illinois*.

It is not the function of courts of equity—much less of federal courts of equity—to give effect to criminal statutes by denying a plaintiff relief merely because he is a criminal.

Much less should a court—state or federal—in one state deny a complainant relief merely because he has violated a criminal statute of another state. It is well settled that "the penal laws of a country do not reach, in their effect, beyond the jurisdiction where they are established."

Thus, in

Commonwealth v. *Green*, 17 Mass., 514, 540,

it was held that the conviction of an infamous crime in another state did not render a witness incompetent, Chief Justice Parker saying:

"To refuse a man the right to be a witness on account of a conviction in another country, would be to suffer that conviction to have force here, and, in some measure, to carry it into execution."

This court approved this case and held the same way in

Logan v. *United States*, 144 U. S., 263, 303.

Why should an infraction of a foreign criminal statute incapacitate a party when it does not a witness?

In

State v. *Pelican Insurance Co.*, 127 U. S., 265, 289,

this court said:

"By the law of England and of the United States, the penal laws of a country do not reach beyond its own territory, except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the courts of another country."

The Antelope, 10 Wheat., 66, 123,

where Chief Justice Marshall said:

"The courts of no country execute the penal laws of another."

Folliott v. *Ogden*, 1 H. Blackst., 123, 135,

where it was held that an attainder in another country, depriving one of his property, did not prevent him from suing on a bond in England, it being said that "the penal laws of foreign countries are strictly local."

Hence, if corn were manufactured into whiskey in Dubuque, contrary to a criminal statute of Iowa, and the whiskey were transported to Illinois, it would there be a legitimate subject of commercial intercourse, being "as recognized by the usages of the commercial world" (*In re Hahrer*, 140 U. S., 545-556), and the Illinois courts could not properly refuse the manufacturer a right to sue for his property. Otherwise, extra territorial effect would be given to the Iowa liquor law.

So the federal courts in one state should not refuse to protect the property in market news—which is in itself, as we shall hereafter see, helpful to commerce—merely because the complainant, by maintaining a hall where such news

originates, violates a criminal statute of another state; for this would be giving to such statute an extra territorial effect.

The Circuit Court of Appeals held that, because petitioner was violating a criminal statute of Illinois, it did not come into the court in Missouri "with clean hands." But is it not apparent that, if this clean hands doctrine were otherwise applicable, violations of a penal statute in Illinois cannot make a complainant's hands unclean in a Missouri court, because an Illinois criminal statute has no extra territorial effect?

But aside from this, to apply the clean hands doctrine to petitioner is to ignore the undisputed limitations of that doctrine.

In

Fuller v. *Berger*, 56 C. C. A., 588; 120 Fed., 274,

the Circuit Court of Appeals of the Seventh Circuit, in refusing to apply the doctrine, said (p. 278):

"Equity is not concerned with the general morals of a complainant; the taint that is regarded must affect the particular rights asserted in his suit. * * * If the defendant can do no more than show that the complainant has committed some legal or moral offense, *which affects the defendant only as it does the public at large*, the court must grant the equitable remedy and leave the punishment of the offender to other forums. In the present case, there have been no dealings between the parties. Nothing has been done to mislead appellees. And appellant, to make his case, simply brings forward his patent and proves the continued and threatened infringement. Against this, appellees establish that appellant has been misusing the patented device. But how does this concern appellees more or differently than it does others?"

The authorities agree that, under the clean hands doctrine, "the wrong must have been done to the defendant him-

self and must have been in regard to the matter in litigation."

City of Chicago v. *Stock Yards*, 164 Ill., 224-238.
Bateman v. *Fargason*, 4 Fed., 32.
Ansley v. *Wilson*, 50 Ga., 421.
Langdon v. *Templeton*, 66 Vt., 173.
1 Pom. Eq., Sec. 399.
Board of Trade v. *Kinsey* (opinion attached).

If petitioner does wrongfully permit illegal transactions upon its exchange, such misconduct prejudicially *affects these respondents only as it does the public at large.*

Furthermore, the alleged misconduct of petitioner does not, within the above rule, relate to the subject-matter of this suit, the quotations.

The uncontradicted evidence in this record is that these quotations and their general dissemination are highly beneficial to legitimate commerce. Respondents' answer so admits (Rec., 63-64) and respondent Christie testified (Rec., 522, 524) that these quotations are now almost indispensable to the grain trade. The Illinois Supreme Court in *Stock Exchange* v. *Board of Trade*, 127 Ill., 153, held that these quotations had become so essential to legitimate commerce as to have become impressed with a public use to the extent that, if distributed at all, they must be given, upon the same terms, to all persons desiring them *for lawful purposes.* In a later case (*Central Stock & Grain Exchange* v. *Board of Trade*, 196 Ill., 396), the same court held that bucket-shops were not entitled to them.

So, too, petitioner's conduct with respect to the quotations, is not at all reprehensible. It gives them to all persons desiring them for lawful purposes (see contract, Rec., 10-18), and seeks to withhold them only from bucket-

shops. Hence the alleged misconduct of petitioner does not relate to the subject-matter of this suit.

We do not here overlook the statement in the opinion of the Circuit Court of Appeals (Rec., 1001) that these quotations are "furnished by the Board of Trade and sent out over the lines of the Telegraph Companies as a means of encouraging speculation in futures and in gambling upon the rise and fall of the market." There is, however, neither in the pleadings nor in the evidence any basis for this statement. The answer does not aver such to be the fact, and no evidence was introduced to prove it. The only inference as to petitioner's purpose deducible from this record is that it furnishes these quotations to the telegraph companies for the purpose of realizing the large revenue therefrom.

The real position of the Circuit Court of Appeals is that petitioner should be denied protection of its *quotations* because they "grow out of *transactions* had in the exchange hall of the Board of Trade of such a nature that they come within the condemnation of the statute of Illinois."

This seems to us directly contrary to two decisions of this court.

Brooks v. *Martin*, 2 Wall., 70-79.
Planters' Bank v. *Union Bank*, 16 Wall., 483-499.

In the former case two persons had joined in a purchase of soldier's claims, which was prohibited by Congress. Certain money which "grew out" of these illegal transactions was in the hands of one of them, and this court sustained a bill by the other to get his share of it.

In the latter case a party to a sale of confederate bonds, which was illegal, was allowed to recover from the party who had made it the proceeds of such sale.

Nor could a court of equity, under this clean hands doctrine, refuse to protect petitioner's property in its quotations, merely because they produce a part—and not an essential part—of the general revenue, which it uses to maintain a commercial exchange, including an exchange room, where, besides the transactions claimed to be illegal, is conducted a large volume of business in many commodities, whose legality no one assails.

Would the keeper of a bucket-shop be denied the right to foreclose a mortgage upon the ground that it was part of the capital of a business prohibited by a criminal statute?

Would a court of equity refuse to protect property upon which was a race track, because the owner permitted an anti-pool-selling statute to be there violated?

If upon this ground petitioner cannot maintain this suit, then it could not resort to a court of equity to redeem from its mortgage on its building, if it does not prevent the bucket-shop law of Illinois being there violated.

There is, it is true, quite apart from this clean hands doctrine, a principle that relief is in some cases denied from considerations of public policy. Thus courts refuse protection to a trade name that is calculated to deceive the public. This is because such a name speaks a lie and is hurtful to the public. Here equity does not concern itself with either party, but considers only the public welfare, and the sole question is, does public policy require the withholding of relief?

But the legal sufficiency of this defense cannot be rested upon this principle, because it is self-evident that the quotations are neither fictitious nor hurtful to the public, and that the public welfare will be best advanced by having petitioner succeed in its efforts to restrict its quotations to lawful

traders and prevent their misuse in bucket-shops. This the *granting* of relief would accomplish.

On the other hand, petitioner neither derived revenue from, nor restricted the use of, its quotations prior to August 1, 1900. Yet for many years before that date this future trading on a large scale took place upon its exchange. Its failure in this litigation could not reasonably do more than restore the situation existing prior to August 1, 1900. How, then, would the public be benefited by *denying* petitioner relief?

Thus, upon no recognized principle of equity was the Circuit Court of Appeals justified in outlawing petitioner from the Federal Courts of the Eighth Circuit—for that is what it amounts to,—even if these quotations do grow out of transactions, in which the intention to deliver is wanting, and those transactions occur in a hall kept by petitioner in violation of a criminal statute of Illinois.

II.

IS A COMMERCIAL EXCHANGE WITHIN THIS CRIMINAL STATUTE OF ILLINOIS, AS HELD BY THE CIRCUIT COURT OF APPEALS OF THE EIGHTH CIRCUIT?

This question affects not only petitioner, but all commercial exchanges in Illinois. As this statute has been re-enacted in Missouri (R. S. Mo., 1899, Secs. 2223, 2225), and there are now in that state two exchanges, the St. Louis Chamber of Commerce and Kansas City Board of Trade, where the character of the business is the same as upon petitioner's exchange, this decision also deprives these exchanges of access to the federal courts.

This statute in this respect has never been construed by the

Illinois courts. *Soby* v. *People*, 134 Ill., 66, referred to at length in the opinion of the Circuit Court of Appeals (Rec., 994) had reference to a *broker's* office, and the conviction of the broker under this statute was sustained. Its language should be confined to its facts (*Carroll* v. *Lessee*, 16 How., at p. 286), and it is not an authority to justify the application of this statute to a commercial exchange.

In construing this statute, the general public policy of Illinois and its other legislation should be considered. That public policy has been to encourage the maintenance of commercial exchanges.

The commercial history of the world long ago demonstrated that exchanges are essential to the highest development of commerce. No great commercial or financial center is without one.

As early as 1849, the great future of the grain trade of the Northwest was foreseen, and the necessity for an exchange in Chicago to facilitate that trade was apparent. In that year the Illinois legislature passed a general statute providing for the incorporation of boards of trade with such powers as are usual in the management and conduct of such institutions. (Gross' Stat. of Ill., p. 116.) The Chicago Board of Trade was incorporated originally under this general act, and continued to exist thereunder until 1859, when its usefulness to the commerce of the state having been demonstrated, the Illinois legislature granted it its present special charter (see charter in exhibit, book of rules), thereby incorporating " the persons now composing the Board of Trade of the City of Chicago" into the present corporation. Sections 4 and 12 of that charter are as follows:

"Sec. 4. The said corporation is hereby authorized to establish such rules, regulations and by-laws for the man-

agement of their business, and the mode in which it shall be transacted, as they may think proper."

"Sec. 12. Said corporation shall have no power or authority to do or carry on any business, excepting such as is usual in the management of Boards of Trade, or Chambers of Commerce, or as provided in the foregoing sections of this bill."

The legislative intent is thus apparent to sanction in Chicago a corporation, with full power to maintain a commercial exchange for the transaction of such business as is, or should become, "usual" in boards of trade or chambers of commerce. In passing this statute the legislature knew the proper office of an exchange to be to furnish facilities for the easy and economical exchange of commodities, and intended by section 12 that this exchange should have all the powers necessary to enable it to compete successfully with rival exchanges of other cities for the grain trade of the northwest. This charter is a perpetual one.

About 1880 (Rec., 920, 921) the instrument known as the "ticker" was perfected, whereby the news of prices prevailing upon an exchange could be automatically and instantly transmitted and widely disseminated. This gave rise to the bucket-shop, a place where people assemble to bet with the proprietor upon the fluctuations of prices on an exchange, as the same are posted upon a blackboard in such shop. This evil at once assumed such proportions that the Illinois legislature realized the necessity of a law for its suppression. This bucket-shop statute of 1887 was the result.

That statute and the previous one granting petitioner its charter are to be construed together. The later act is not to be so construed as to nullify the former, unless this is the necessary inference of the legislative intent. The first act established a corporation with perpetual life and granted it power to maintain an exchange for the transaction of such

business as might be "usual in the management of boards of trade or chambers of commerce." The second act contemplates a *forfeiture of the charter* of every corporation within its terms, if the offense therein defined is continued after a first conviction. Can it be that the Illinois legislature, in the act of 1887, contemplated the termination of the charter of this exchange—which plays so important a part in the commerce of the state—because of speculation in its hall, which, as we shall see, it cannot stop without destroying its efficiency as an exchange? If such had been its purpose, would it not have used language more plainly indicating such intention? The nature of the business upon petitioner's exchange in 1887 was, and was then generally known to be, the same as it is now. The legislature then knew that the facilities, which this exchange afforded, unavoidably gave rise to much speculation.

Is it not plain that the act of 1887 was intended to reach, not this large commercial exchange, but only offices maintained by bucket-shop keepers and those who act ostensibly as brokers? Indeed, the legislature has so declared in that part of the fourth section of the act which is quoted in the petition herein. Petitioner is clearly, not within either of the two classes to which the statute is thus confined. It conducts no business at all. It makes no transactions, as do bucket-shops and brokers.

Such has been the practical construction placed upon the statute by the courts and public officials of Illinois ever since its passage. This statute requires (Sec. 4) that every grand jury should be specially charged to investigate violations of this act. Such has been the practice in Chicago ever since its passage; yet never has it occurred to anyone to indict petitioner, nor has public sentiment ever thought juries or officials derelict for not doing so.

It is therefore submitted that the Circuit Court of Appeals of the Eighth Circuit erred in holding that this criminal statute of Illinois includes commercial exchanges like petitioner.

III.

THE PETITIONER DOES NOT VIOLATE THIS ILLINOIS STATUTE, EVEN IF IT BE CONSTRUED TO INCLUDE COMMERCIAL EXCHANGES.

These quotations are the prices in the "pits" where the trading is almost entirely for future delivery. As to these transactions, the Circuit Court of Appeals says (Rec., 1,000) (italics ours):

"There is absolute unanimity in their evidence to the effect that much the larger part of these transactions were deals wherein it was not *expected or understood* that there would be any delivery of the article nominally dealt in, but the same were carried through and settled by methods clearly devised to avoid the need of actual delivery.

The estimates of the witnesses vary as to the percentage of the transactions in which actual delivery was *contemplated* or had, running from one to fifteen per cent., thus proving that at least eighty-five and more probably ninety-five per cent. of the transactions would come under the condemnation of the Illinois statute."

The witnesses whose testimony is here referred to were *eleven* members, or clerks of members, of petitioner, *selected* by respondents out of a total membership of eighteen hundred and out of several hundred members actively trading in these pits. Each witness necessarily confined his testimony to his own, or his firm's, business.

Not one of these witnesses testified that in a single trade —much less in his business as a whole—"it was not expected or understood that there would be any delivery of

the article nominally dealt in." Not one of these witnesses gave his estimate "as to the percentage of transactions in which actual delivery was contemplated." Each did give his estimate of the percentage of his firm's transactions in which deliveries were *actually made*, and this varied with the different witnesses from five to fifteen per cent. From this, and this alone, the Circuit Court of Appeals found that "at least eighty-five per cent. and more probably ninety-five per cent. of the transactions" were "in all essentials gambling transactions." In other words, that court held that the mere fact that deliveries were not made at the *maturity* of these time-contracts is in itself sufficient to prove that deliveries were not *intended* when the contracts *were made*.

The unsoundness of this conclusion is easily demonstrated by considering the nature of the business of a certain class of traders, the grain buyers, who participate largely in this future trading. The testimony of Mr. Marcy (Rec., 109-140), the vice-president and manager of the Armour Grain Company, one of these grain buyers, stands uncontradicted in this record, and will sufficiently illustrate the business of this class. Mr. Marcy's company does a strictly merchandising business. It does not speculate at all. (Rec., 113.) It makes no contracts for future delivery except as a part of its grain business (Rec., 130) and except a very little commission business it does for others. The volume of its own grain business is 50,000,000 bushels a year or more. Every evening it sends from Chicago to numerous country points, offers to buy at a certain price, if accepted by a certain hour the next morning. The next morning it aggregates the amount of these acceptances, and at once sells in the proper pits of petitioner's exchange *for future delivery* a like quantity of grain, such sales contemplating grain of a certain established grade. The aim of the Ar-

mour Grain Company in doing this is to at once find a place for the grain it has bought, and thus eliminate all speculation or risk incident to the fluctuations of the market. Much of this grain, when thus bought, is not in a condition to go upon the market. In due time the grain is shipped to the Armour Grain Company at Chicago; is there inspected, put into elevators, and warehouse receipts issued therefor. If the grain is up to the grade specified in its time sales, the company frequently delivers it upon its sales. If it does not come up to the required grade, it is necessarily sold as off-grade grain. Again, between the making of these sales for future delivery, and their maturity, the Armour Company frequently finds it more profitable to divert the actual grain from Chicago to some other market, or, when it reaches Chicago, to sell it at once for export or consumption, than to hold and deliver it upon these future contracts. When sold as off-grade grain, or thus sold more profitably for export or consumption, the Armour Company, to meet its sales for future delivery, immediately upon selling the actual grain, makes, in petitioner's "pits" contracts to *purchase* the same quantity of the same kind of grain for delivery in the same month as in its previous sales. This practice is called in the trade "hedging."

The uncontradicted evidence of Mr. Marcy (Rec., 114) is that this opportunity to hedge is of great commercial value, and has reduced (to the producer and consumer) the cost of handling the grain several cents a bushel, the grain being now "moved from the farmer to a foreign market on a margin of probably a cent and a half to two cents a bushel, covering all commissions in between," and that "we could not do our business without it."

The Circuit Court of Appeals holds such of these hedg-

ing contracts by grain buyers, as are not completed by actual delivery, illegal. This will be the more apparent by reference to Judge Thompson's decision (115 Fed., 575), which the Circuit Court of Appeals approves, and which expressly declares these hedging transactions illegal.

To determine the legality of this hedging, take a single one of these transactions. The Armour Company buys 5,000 bushels of wheat, and at once proceeds to find an assured place for it by immediately selling in the "pits" an equal quantity for future delivery. Measured by the legal rule or test applied to the usual exchange transactions (*Clews* v. *Jamieson*, 182 U. S., 461) this sale is legal unless *at the time it was made* the Armour Company did not intend delivery. Mr. Marcy clearly testified that his company did not make a future sale until it had purchased a like amount in the country, and that the grain thus purchased is brought to Chicago and delivered upon this contract unless, when it gets to Chicago, it does not come up to the required grade for future delivery, or unless, intervening the making of the purchase in the country and the time of delivery on the sale, some one is willing to pay more for this grain than can be made by delivery upon the future sale. Now, when the Armour Company sells the wheat in the pit it does not know that the wheat purchased in the country will *not* grade so as to be deliverable, as inspection does not take place until it gets to Chicago. It is only after inspection in Chicago that the Armour Company forms the intention not to deliver upon its future sale. So, too, the opportunity to sell more profitably for immediate delivery for export or consumption does not arise until after the grain reaches Chicago. Thus in neither contingency does the Armour Company intend not to deliver at the time it makes the hedging sale. Such in-

tention arises from subsequent events. The intention is formed *after the sale,* and for a legitimate reason.

If this single transaction, as seems clear, does not contain the gambling intent, and is valid, how can the business as a whole be illegal? If, as respects a single transaction, failure to complete the sale by actual delivery does not prove it illegal, how can the aggregate of such transactions be so regarded merely because in a large portion of them delivery is not in fact made? Yet such is the decision of this Circuit Court of Appeals.

The evidence shows the future trading by the Armour Company in these pits to be exclusively of this class, and to aggregate in one year sales of 50,000,000 bushels, and that some of these transactions, involving 9,718,000 bushels, or about 20 per cent., were completed by actual delivery, the balance being closed by counter purchases under circumstances already explained. Wherein does that part of these future sales of 50,000,000 bushels, which did not result in actual delivery, differ, as respects legality, from the sales of the 9,718,000 bushels thereof, which were actually delivered? *The intention was the same at the time the transactions were made.*

To continue further the consideration of the business of these grain buyers, and as typical thereof, that of the Armour Company, we have seen that 80 *per cent.* of its hedging sales are closed by counter purchases of the same quantity for the same month's delivery. If no method or opportunity for settling these off-setting contracts were presented, the Armour Company would be compelled to await the delivery month before it would be rid of them. To obviate this and the risk and expense attending it, a system has been devised, which is recognized in petitioner's rules and is facilitated by the maintenance by it of a clearing

house, to eliminate these *practically closed* trades by offsetting them. Most of this large record is taken up in showing the working of this system of settlement.

This is what the Circuit Court of Appeals refers to by the words "settled by *methods* clearly devised to avoid the need of actual delivery," the court evidently thinking this system should be condemned as illegal. But this is in direct conflict with *Clews* v. *Jamieson,* 182 U. S., 461, where this court overruled the lower courts and expressly sustained a system of elimination and substitution that in principle is not distinguishable from that of petitioner's. In fact, a similar system now prevails upon all the active commercial exchanges.

Other grain buyers corroborated Mr. Marcy as to this hedging. (Rec., 141, 164, 182, 209.) *This evidence shows that practically all the grain brought to Chicago is thus hedged against upon petitioner's exchange.* This record shows that the receipts of wheat, corn and oats in Chicago for the year 1900 were 287,741,515 bushels. This does not represent, however, the total volume of these hedging contracts by grain dealers. Much grain bought by them and hedged against in these pits is subsequently diverted to other markets. (Rec., 111-210.) Grain buyers at other points hedge on the Chicago market. When put into elevators and carried by the purchasers from these grain buyers until it goes into consumption, it is also hedged against. (Rec., 114, 892.)

Millers, when selling flour to be delivered in the future, hedge upon petitioner's exchange by buying an equivalent in wheat for future delivery. Sometimes this wheat will be used to produce the flour, but more frequently the millers buy upon personal inspection and in car lots the

kind of wheat best suited for grinding, as it comes into the market, and then make counter sales to close their hedging purchases. So, too, millers, who accumulate wheat for future grinding, hedge by selling a like quantity for future delivery, thus protecting against a decline. Mr. Rice, a large miller, testified (Rec., 196) that otherwise millers would be obliged to take a larger margin of profit to protect against the fluctuations of the market.

Of hedging by millers, the U. S. Industrial Commission (Final Report, Vol. 19, p. 186) says:

"This system, as stated by entirely trustworthy representatives of the trade, has been found absolutely necessary in order to prevent millers from assuming the extraordinary risk of changes in the market value of wheat. Only the more speculative and daring millers would undertake to fulfill future contracts without exercising this precaution of purchasing "wheat futures."

This hedging is resorted to also by the packers (Rec., 1341-2), exporters, etc. In short, it has become an essential facility in the present day methods of handling the products of the farm between the producers and the consumers.

It is impossible to attain even an approximate idea of the volume of this hedging business upon petitioner's exchange. The brief of respondents' counsel in the lower court admitted that it "constitutes a very large part of the dealings in the pits."

It thus appears that the Circuit Court of Appeals in condemning as "in all essentials gambling transactions" all this future trading when not followed by actual delivery, has branded as illegal these hedging contracts, and has branded as law-breakers all dealers and merchants who engage in them.

On the other hand, we contend that the many grain dealers, millers, etc., who, as incidental to their business, resort to this hedging, are not gamblers; that in these transactions the gambling intent—and that is the real question—is wholly absent. The gambler upon exchanges is one who wishes to take the risk of the fluctuations of the market in order to thereby profit. The merchant who hedges resorts to the market not to take a risk, but to avoid all risk. The two transactions are essentially different in intent and in legal contemplation.

It would be difficult to suggest a commercial question of more gravity and importance, or to foresee the far reaching consequence to commerce, if this decision of the Circuit Court of Appeals is to stand.

But even if the greater part of this trading be illegal as between the traders, does it follow that petitioner is guilty of violating this statute? It is a criminal statute, to be strictly construed, and petitioner should not be held to violate it unless guilty of some intentional wrongdoing. As the alleged "pretended buying or selling" is not "conducted" by it, the only provision of this statute which petitioner can violate is that which prohibits the keeping of a place where it is "permitted."

The word "permitted" implies the doing of something which the party could reasonably prevent. Hence petitioner's misconduct, if any, must consist in its failure to make reasonable efforts to prevent trading in which delivery is not contemplated.

In what, then, does the misconduct of petitioner consist? It transacts no business. It maintains an exchange hall, admits and expels members, and provides rules to govern them in their relations to it and in their transactions with each

other upon its exchange. These rules contemplate and facilitate a method of settlement of trades by offsetting, as it might lawfully do. (*Clews* v. *Jamieson*, 182 U. S., 461.) These rules also provide as follows (Rule IV):

Sec. 8. "Any member of the association who shall be interested or associated in business with, or who shall act as the representative of, or who shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations in the market price of any commodity—without a *bona fide* purchase and sale of property for an actual delivery—shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the association; and upon complaint to, and conviction thereof by the Board of Directors, he shall be expelled from membership in the association."

Sec. 9. "When any member shall be guilty of making or reporting any false or fictitious purchase or sale * * * or when a member shall, either in the Exchange Building, or elsewhere, contract to give to himself or another the option to sell or buy any of the articles dealt in on this Exchange in violation of any criminal statute of this state, he shall be expelled by the Board of Directors."

Petitioner also exacts from each of its incoming members an agreement to abide by its rules.

The above rules are practically the same as in *Clews* v. *Jamieson* (182 U. S., 461), wherein this court said:

"Of course we do not say that these rules actually prevent gambling on the exchange. It is possible, if not probable, that gambling may be and is in fact carried on there, but it must be in violation of, and not pursuant to, the rules."

Similar rules were, in *Bibb* v. *Allen*, 149 U. S., 499, held to establish the legality of contracts made with reference to them in the absence of clear proof of a mutual intent not to deliver.

The purely speculative transactions are not distinguishable

from the others. They are alike in form, made in the same way, and to outward appearances are the same. If petitioner were to constantly surround its pits with official watchers, they could not distinguish the one kind of contract from the other, nor separate the quotations. What distinguishes the transactions is the *intention* of the parties. But how can petitioner ascertain what is in the minds of the traders or their customers? As well said by Judge Hook in this case (Rec., 959):

"Common experience justifies the observation that in the great majority of cases it is impossible to secure the requisite evidence of the gaming character of such transactions. And it is not competent to any finite being to search the minds of the participants and discover their purposes and intentions."

The speculative spirit is innate. So long as the desire for gain finds a place in the human breast, there will be speculation. This spirit of speculation will always be attracted to commodities susceptible to ready transfer. Grain is such, because, when put into warehouses and divided into grades, it assumes for transferring purposes the form of a document transferable from hand to hand. The same is true of corporate stocks.

It is the function of exchanges to improve the facilities for transfer in aid of legitimate commerce. When the market is thus made and these facilities created, the speculators step in and avail themselves of them. To this extent, and to this extent only, can petitioner be said to contribute to improper speculation. It performs with a high degree of efficiency its function of facilitating legitimate commerce, as its prominence as a grain and provision exchange shows. Because it has done this, speculation resorts to it. But this is also true of the New York Stock Exchange, the Chicago Stock Exchange, the New Or-

leans Cotton Exchange, etc. Yet, although this constitutes the head and front of its offending, the Circuit Court of Appeals holds it a criminal and a discredited suitor in the Federal courts. For doing what? For furnishing facilities for legitimate commerce, which the speculative spirit also avails itself of.

Now, how can this decision be reconciled with *Clews* v. *Jamieson* (182 U. S., 461)? In that case the transactions under consideration arose in Illinois. This same criminal statute was under review by this court. The lower courts adjudged the transactions gambling ones because entered into with reference to a certain facility for ready settlement which the rules of the Chicago Stock Exchange provide, known as trading "for the account." But this court adjudged this facility for trading legal, and upheld the transactions made with reference to it. If we read that decision right, it upholds the action of the exchanges in providing efficient facilities for trade, although these facilities are such as speculators will avail themselves of. If so, is it not clear that the Circuit Court of Appeals has in effect ignored *Clews* v. *Jamieson;* for it decides, in applying the laws of the same state, that petitioner cannot sue in the Federal courts because its exchange—which is but the sum total of its facilities for trade—gives rise to much illegal speculation?

Further, is it not apparent, when the actual situation upon petitioner's exchange is considered, that nothing short of the prohibition of *all* contracts for future delivery would prevent speculation? The legislature, if it intended this statute to apply to this exchange, must be held to have contemplated a prohibition of all time trading thereon.

But the State of Illinois has evinced no intention to pro-

hibit all contracts for future delivery in order to stop illegal speculation, and in view of the recent experience of Germany in this direction (see article in Century Magazine, September, 1903), is not liable to do so. It doubtless appreciates that all speculation can no more be suppressed than can all drinking, and that, whatever may be its moral aspects, speculation has upon these exchanges a distinct commercial value. This time trading, as fully explained in the final report of the United States Industrial Commission, Vol. 6, pp. 5, 23, 28, 29, 189-192, 223 and 224, Vol. 19, pp. 185, 186, is an essential part of the distributive system by which the crops are marketed. That these grain buyers may sell for future delivery to hedge, there must be others there willing to buy for future delivery. The presence of these latter creates a market—and the more of them there are the broader is this market—which, meeting and absorbing these hedging sales, carries the grain (to the advantage of producers and consumers), from the time the farmers sell it in the fall until it is absorbed during the year by the consumers.

As said by Judge Hook (Rec., 959):

"A vast volume of legitimate business is admittedly transacted on the exchange. The Board of Trade performs a most important function in the internal commerce of this country."

There is therefore no warrant, either in law or in the facts for branding, as the Circuit Court of Appeals does, petitioner as a criminal. It does not violate this criminal statute of Illinois.

In Conclusion—Upon the result of this application will depend the success of the laudable efforts of this exchange to keep its quotations from bucket shops.

It seems no longer a controverted question that these mar-

ket quotations are a species of property which the court of equity will protect by injunction. (*Illinois Com. Co.* v. *Cleveland Telegraph Co.*, 56 C. C. A., 205; 119 Fed., 301; *Cleveland Tel. Co.* v. *Stone*, 105 Fed., 794; *Board of Trade* v. *Thomson Com. Co.*, 103 Fed., 902; s. c., 109 Fed., 705, Judge Hook's opinion in this case, Rec., 956.) The same rule is declared in England respecting the quotations of the London Stock Exchange (*Exchange Tel. Co.* v. *Gregory*, L. R. 1896, 1 Q. B., 147), and in Massachusetts respecting certain trade news similarly disseminated. (*F. W. Dodge Construction Co.* v. *Information Con. Co.*, 183 Mass., 62.)

This campaign of petitioner for the protection of its quotations has been demonstrated to be feasible. If sanctioned by the courts and followed, as it probably will be by the other leading exchanges, bucket-shops will be suppressed by being deprived of quotations to bet upon. If, however, the doors of the courts are to be closed against petitioner, its efforts will be defeated, and it is not at all probable that other exchanges will then incur the expense of like efforts.

The bucket-shops will then become permanent institutions, criminal laws having been found inadequate for their suppression.

Respectfully submitted in the belief that this record justifies the issuance of a *certiorari*.

HENRY S. ROBBINS,
Counsel for Petitioner.

CONFLICTING DECISION BY THE CIRCUIT COURT OF APPEALS OF THE SEVENTH CIRCUIT.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

No. 1032, OCTOBER TERM, 1903, JANUARY SESSION, 1904.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Appellant,

vs.

THE L. A. KINSEY COMPANY, A CORPORATION, LOUIS A. KINSEY, FRANK M. KETCHAM, JOHN S. ROBERTS, MARTIN A. LASKEY, JAMES H. DUNN, ROBERT B. DUNGAN, ET AL.,
Appellees.

Appeal from the Circuit Court of the United States for the District of Indiana.

Before JENKINS, GROSSCUP and BAKER, *Circuit Judges.*

On final hearing appellant's bill to enjoin appellees from purloining its continuous quotations was dismissed for want of equity.

Appellees discuss the questions whether the quotations are property and whether, if so, appellant lost its proprietary right by its method of giving them out; but that part of the case is ruled in this court by the decisions in *Illinois Commission Co.* v. *Cleveland Telegr. Co.*, 119 Fed. 301, and *Sullivan* v. *Postal Telegr. Cable Co.*, 123 Fed. 411.

There is, however, one further matter that requires presentation and decision. It pertains to the defense that appellant has no standing in a court of equity for either or both of two reasons: that the quotations are contraband and may be seized by any one with impunity; that appellant, even if the quotations themselves are not contraband, comes into court with unclean hands in this, that it seeks to exclude all others from using property (the quotations) which

might be put to good uses, in order that it may aid its members in maintaining the gambling in grains and provisions which it permits to be carried on in its exchange hall.

Respecting the facts of this defense, the master found as follows:

"The transactions conducted in the 'pits' of the complainant association, while they are of the same general character, are divisible into two classes, which are described by the members of the Board of Trade as *hedging* transactions and *speculating* transactions, respectively. Of the members of the complainant association who are engaged in business in the Exchange Hall, the number conducting speculative transactions is between one-third and one-half of the total, and practically all of such members conduct a *hedging* business.

"The principals who are engaged in hedging transactions are, generally speaking, either grain merchants, millers, or manufacturers of grain products. The method of such principals is this: When they have bought grain in the country or in city warehouses which they propose to hold for future sales to domestic or foreign purchasers they at once sell in the pits of the complainant association an equal amount of grain; or, on the other hand, if they have sold to domestic or foreign purchasers grain or grain products, for future delivery, they at once buy in the pits of the complainant association an equal amount of grain for future delivery at times corresponding with the times of their selling contracts. And thus when they have contracts of purchase they have contracts of sale for future delivery in the pits practically even with their purchases, and if they have contracts of sale with domestic or foreign purchasers, they have contracts of purchase for future delivery in the pits practically even with such contracts of sale. The object of such hedging is to insure against loss by fluctuation in the market in the commodity which the principal is carrying or which he has sold in advance of purchase and manufacture upon a time contract. A hedge must always be against a cash commodity.

"A speculative transaction is not based upon a cash commodity primarily. In effect it is based upon the confidence which on the one hand the seller of a commodity for future delivery has in his personal opinion that the price of the commodity sold will by the time of delivery have so declined that he can purchase the commodity for less than his selling price and thus make a profit, and which on the other hand, the buyer has in his personal opinion that the price of the commodity bought will so advance by the time of delivery that the commodity bought will be worth more at the time of delivery than it was at the time of purchase and that he will thus have a profit. It is possible under the rules, usages and practice of the complainant association for the seller and the buyer, respectively, if either changes his

opinion, to buy or sell in the 'pits' the commodity which he has previously sold or bought, as the case may be, for the same time of delivery; while this procedure is in form the same as hedging, it is not designated as 'hedging,' but is styled 'spreading.' It is also possible under the rules, usages and practices of the complainant association for a member of the complainant association to make such counter contract of purchase or sale during the same day that he has under an original contract of sale or purchase and thus within the day or within a few days to have his advantage of profit or to adjust his disadvantage of loss; such a course of business is designated 'scalping.'

"The evidence does not contain sufficient data upon which to predicate an estimate of the aggregate volume of business conducted in said pits daily, monthly or yearly; it does appear, however, that the volume of such business is enormous; one firm conducted transactions in wheat daily aggregating 1,500,000 to 2,000,000 bushels, and in corn 1,000,000 bushels daily; another firm's transactions in wheat daily amounted to 6,000,000 bushels; a third firm's transactions in wheat daily amounted to 4,000,000 bushels; a fourth firm's transactions amounted to 1,000,000 bushels daily; a fifth firm's transactions in all grain amounted to 1,800,000 bushels daily, and a sixth firm's transactions in all grain amounted to 2,000,000 bushels daily. While it is true that the business of these six firms in the pits is much larger than the business of any other six firms conducting transactions in the pits and that it would not be proper to say that the average business is a proper average of each of the persons conducting transactions in the pits, it is nevertheless true that it is fairly deducible from the evidence that the aggregate business transactions in grain was largely in excess of the total wheat and corn production of the entire United States during either of the years 1900 and 1901 and was many times over the entire receipts in Chicago of grain during each of said two years of 1900 and 1901 and of such receipts in Chicago less than twenty per cent. inspected up to grades of grain which could be delivered upon time contracts made by said sales and purchases in the pits. It is also true that a decrease in the total grain productions of the United States does not cause a proportionate decrease in the volume of business done in the 'pits' of the complainant association, but on the contrary such business is larger during a year in which there is a shortage in the grain crop.

"Under the rules, usages and practice of the complainant association all time contracts made in the 'pits' are carried until it is possible to close them as between members of the complainant association by either one of three methods of settlement, namely, the method called 'direct settlement,' the method called 'rings' or 'ringing out'

and the method of delivery by delivering warehouse receipts physically or 'by notice.'

"Most time contracts made in the 'pits' are adjusted as between members of the complainant association before the specified time of delivery arrives by either the first or the second of the above named methods. Direct settlements are effected by offsetting similar contracts at the close of the business hours of each day in the following manner. As soon as is practicable after the close of business in the 'pits' each broker—individual, firm or corporation conducting business in the 'pits' takes from the day's transactions on his books the contracts similar as to amount and time of delivery to counter contracts made with other members of the complainant association and ascertains therefrom the difference of the aggregate prices of such similar contracts, and if the difference be in his favor, the amount of such difference is charged to the other party in such counter contracts, and if the difference is against him, such difference is credited to the other party to such counter contract; the following is a simple illustration: if during the day broker A has sold to broker B 5,000 bushels of December wheat at 75 cents per bushel and broker B has sold to broker A 5,000 bushels of December wheat at 76 cents per bushel, after offsetting the contracts at 75 cents per bushel, there is a difference in B's favor of one cent on each bushel or $50. This offsetting difference in cash is placed as a debit or credit, as the case may be, upon the clearing house sheet hereinafter described of the respective brokers, parties to said counter or offsetting contracts.

"The 'ring' method of settlement is as follows: each broker (person, firm or corporation) conducting business in the 'pits' has an employe who is called a 'settlement clerk,' who keeps a record of all his employer's transactions in the 'pits'; the complainant association furnishes a room wherein all of such settlement clerks meet at stated hours each day and compare their respective books called "settlement books," which are required by the complainant association to be kept by each broker. Upon comparing their respective books said settlement clerks ascertain what, if any, outstanding time contracts may be offset by some other corresponding time contract made by the parties with other members of the association and which of such contracts are by consent of the parties thereto permitted to be offset and thereupon under the rules of the complainant association are deemed to have been settled provided the requirements of sections 6, 7, 8 and 9 of rule 22 of the complainant association are met as therein provided with reference to the clearing house sheet and other details of settlement therein specified. * * *

"Theoretically and in bare outline, an illustration of the 'ringing out' method is as follows: Broker A sells to Broker B 5,000 bushels

May wheat, Broker B sells to Broker C the same amount, Broker C sells to Broker D the same amount and Broker D sells to Broker A the same amount; by consent of Brokers A, B, C and D all of these time contracts are deemed discharged and by novation there is substituted a contract wherein Broker A, the initial seller in the series of discharged contracts, sells to Broker D the last buyer in the series of discharged contracts. The Clearing House sheets of the complainant association in evidence in this suit show that the actual process of 'ringing out' time contracts by elimination and substitution, is much more complicated than the outline illustration, but that illustration exhibits the principle of the process. Among the daily transactions in complainant's 'pits' there are 'hedging' contracts, 'spreads' and 'scalping' contracts; and all of these forms of time contracts are adjusted by both the 'direct' method and the 'ring' method of settlement. Upon the question that (what) part of all the transactions in the pits are adjusted by the 'direct' method and the 'ring' method of settlement the evidence is not very satisfactory. It tends to show, however, and I accordingly so find, that at least three-fourths of the total transactions in the pits are adjusted by the 'direct' and 'ring' method of settlement.

"In the event that said time contracts cannot be settled by either the 'direct' method or the 'ring' method, they are and *must be* closed by a third method, namely, delivery under the rules and usages of the complainant association. Said rules are as follows:

"Rule XXI—Section 1. All deliveries upon contracts for grain or flax seed unless otherwise expressly provided, shall be made by tender of regular warehouse receipts." * * *

"The rules of the complainant association do not permit any persons other than members of said association to make 'time' contracts upon the floor of the Exchange Hall and all 'time' contracts made in the pits are contracts between the members of the complainant association, who are in said transactions respectively sellers and buyers. The rules of the complainant association permit members of said association as between themselves and non-members to act as brokers in 'time' contracts made in the pits. In case a member of the complainant association in making a 'time' contract in the pits acts as a broker for an undisclosed principal if such contract is settled by either the 'direct' method or the 'ring' method, such settlement does not discharge it so far as such undisclosed principal is concerned, as between him and his broker, but the latter is required under complainant's rules to substitute a duplicate 'time' contract with the two elements of identity, namely, like amount of grain or other commodity and like date of delivery, but not like price. If such substituted contract is not a duplicate, but differs from the original in price, the broker

becomes principal as to difference in the prices between the original and the substituted contract, and if it is impossible for such broker to substitute either a duplicate or a similar time contract, the broker becomes principal as to the entire time contract instead of the original principal with whom he as broker, in behalf of his own undisclosed principal, entered into said original contract.

"The system of 'hedging' in the pits has a commercial influence which is favorable both to the interest of the producer and the consumer, in that the large cash grain houses, which conduct transactions in complainant's Exchange Hall by reason of the risk to them from market fluctuations being decreased through 'hedges' are able to take and do take a smaller margin of profit and thus they pay to the producer a higher price and sell to the consumer at a lower price; the person taking the side of such hedging contract opposite of that to such grain house, is the person who assumes the risk.

"The 'direct' method of settlement and the 'ring' method of settlement is not only an advantage to the members of the complainant association in that it relieves them from the responsibility of carrying their contracts with other members of the complainant association, but they have added to this advantage the benefit of the margins deposited with them by the undisclosed principals for whom they act as brokers. * * *

"Section 8 of Rule IV of the complainant association is as follows:

"Sec. 8. Any member of the association who shall be interested or associated in business with, or who shall act as the representative of, or who shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations in the market price of any commodity—without a *bona fide* purchase and sale of property for an actual delivery—shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the association; and upon complaint to and conviction thereof by the board of directors, he shall be expelled from membership in the association. * * *

"The complainant association has prescribed no method or means which shall be employed by members of said association for the purpose of ascertaining the intent of their respective customers with respect to the delivery or non-delivery of the commodity covered by any time contract.

"Every member of the complainant association acting in the pits as a broker for a non-member customer requires from such customer a deposit as security in each transaction conducted by him, and this fact is within the knowledge of the directors and executive officers of the complainant association. The rules of the complainant asso-

ciation authorize the members of said association who act as brokers to charge broker's commissions in amounts fixed by such rules. One of such commission charges is expressed in part as follows:

'For the purchase or sale and for the purchase and sale of property for future delivery, whether the contract for purchase or for sale be first made as follows:' * * *

"Using a member of the complainant association as his broker, a non-member thereof may become a party to a time contract as buyer or seller and at any time before the date of required delivery he may become a party to another contract in which he takes the opposite side to that held by him in the first mentioned contract; such counter or reverse time contract may be authorized in the same order which authorizes the first contract by including in said order a so-called 'stop-loss' order; when such contracts are made they may be settled and are often so settled as between the member of the complainant association who acted as broker and his non-member customer by the payment of the difference between the contract prices. The fact that such is the custom is a fact well known to the directors and executive officers of the complainant association.

"The rules of the complainant association provide for settlements of time contracts made in the pits when the seller does not deliver the property on the last day of the month of the stipulated delivery—the rules and usages of the complainant association fix such last day of the month as final day of delivery—by allowing the purchasers the privilege of electing: first, to consider the contract forfeited; second, to purchase the property on the market for account of the seller at 1:15 o'clock of the next business day; or third, by requiring a settlement with the seller at the average market price of the property sold on the last day of the month of delivery."

The master drew conclusions favorable to appellant and recommended a decree in accordance with the prayer of the bill.

The court, reviewing the matter on exceptions, sustained the master's findings of fact except that the percentage of transactions in which no actual deliveries were made was nearer 95 than 75; but disagreed with the master's conclusions (125 Fed. 72) and dismissed the bill for want of equity.

BAKER, *Circuit Judge,* delivered the opinion of the Court:

I. We deem it unnecessary to determine from the evidence whether the percentage of trades in which actual deliveries were made was 5 or 25. The finding of the one figure or the other would not prove what proportion of the remaining no-delivery transactions were gambling. Of these, an indeterminate number were "hedging

contracts." If we felt called upon by the necessities of this decision to give a definite opinion of hedging, the record might well lead us to find that hedging is a manufacturer's or merchant's insurance against price-fluctuation of materials, and no more damnatory than insurance of property and life, which in one sense are wagers that the property will not be destroyed during the term and that the life will not fail in less than the expectancy in the actuaries' tables. The remainder of the no-delivery transactions were "speculative." But speculation is not unlawful. One may buy any sort of property to hold for a rise; one may contract to buy or sell property not in possession or in existence at the time; and lawful contracts may lawfully be cancelled and settled in advance of the time of performance. If a contract, lawful in form, is entered into, it is lawful in fact even though one of the parties never intended to perform his part of it; that is, the intent that the lawful form shall cover a sham must be mutual to make it a sham. We think the court's conclusion that, because in 95 per cent of the trades no deliveries were in fact made, it was intended that in those cases deliveries should not be made, and that the parties in nineteen instances out of twenty were using the forms of lawful contracts to cover mere wagers on the future prices of commodities, is not warranted by the facts in the record. The "direct" and "ring" methods of settlement between members might cancel out nine-tenths of the bids back and forth between the members as agents, and yet every contract may have been perfectly legal and enforceable between the principals, and every principal satisfied by receiving a "substitute" contract. If a seller intended not to deliver but to settle on differences if prices rose, the buyer who entered into the contract in good faith and who desired to receive the property could not force the seller to deliver. In every such case there would be no delivery, but the buyer would have a valid cause of action. Undoubtedly gambling was going on in the exchange hall; but it was contrary to appellant's by-laws. Appellant was chartered by Illinois for a lawful and useful purpose, and the association adopted and promulgated suitable by-laws and rules. We think the record fails to show that the dominant feature of the members' dealings was unlawful, much less that appellant, as a creature of the State, was violating its charter or was particeps criminis in what gambling the members carried on.

We do not, however, attach very much importance to the preponderating character of the transactions in the exchange hall, because, in our opinion—

II. The real subject-matter of the suit is the property-right in the news, in the reports of prices. Even if it were true that 95 per

cent of the dealings in the exchange hall were wagers, the prices are the same for the transactions that are not wagers, and the quotations sent out show the figures at which honest dealers may secure contracts. Millers, grain-buyers, elevator companies, govern their dealings by the market prices made in appellant's exchange hall. The news therefore serves, or at least is capable of serving, a useful purpose. So it seems to us immaterial what proportion of the transactions are wagers, since the prices made in the transactions are the prices that farmers and shippers can get, and since the news of the prices and the dissemination thereof are valuable to the community. News may be an object of lawful ownership, though nine-tenths of the things reported be unlawful.

III. Nor should the property in this case (the news, the continuous quotation of prices) be adjudged contraband because it is susceptible of bad uses as well as good. Gamblers in Indiana may settle their bets on prices according to appellant's quotations, and this quite irrespective of the fact, if it were the fact, that 95 per cent of the transactions in appellant's exchange hall were lawful, Just as Indiana grain-dealers may make and settle their honest contracts on the basis of appellant's quotations regardless of the fact, if it were the fact, that 95 per cent of transactions reported were gambling. It seems to us, therefore, that the news as news is not without the pale of protection and that the moral quality is chargeable solely to the user.

IV. The property concerned in this suit not being contraband, should appellant be denied the writ of injunction even if it were true that appellant permits gambling in its exchange hall? We think not. Suppose this non-contraband news were collected and disseminated by the Associated Press. If that company were complainant and "clean-handed," its right to an injunction, the case being proper in other respects, would not be doubted. But if complainant were a gambler or a thief, what then? We think our answer has been sufficiently stated in *Fuller* v. *Berger*, 120 Fed. 274: "Equity is not concerned with the general morals of a complainant,—the taint that is regarded must affect the particular right asserted in his suit. * * * If the defendant can do no more than show that the complainant has committed some legal or moral offense, which affects the defendant only as it does the public at large, the court must grant the equitable remedy and leave the punishment of the offender to other forums." In this case, the appellees, citizens of Indiana, have never had any dealings with appellant respecting the quotations; they have not been misled or deceived by appellant in any way; and they certainly are no more concerned with or affected by appellant's viola-

tions of the common law or of the penal laws of Illinois than the general public.

In reaching our conclusion, we have given respectful consideration to the cases of *Board of Trade* v. *O'Dell Com. Co.*, 115 Fed. 574, *Board of Trade* v. *Donovan Com. Co.*, 121 Fed. 1012, *Board of Trade* v. *Ellis*, 122 Fed. 319, *Christie Grain & Stock Co.* v. *Board of Trade*, 125 Fed. 161, and regret that we are unable to concur therein. We have been aided by the opinion of Judge Hook at circuit (116 Fed. 944) in support of his decree in the *Christie* case, which was reversed in 125 Fed. 161.

The decree herein is reversed, with the direction to enter a decree in appellant's favor in conformity to the prayer of the bill.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 224.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Petitioner,
vs.
CHRISTIE GRAIN & STOCK COMPANY and C. C. CHRISTIE,
Respondents.

Certiorari to Circuit Court of Appeals for the Eighth Circuit.

STATEMENT.

The general question in this case is, whether a commercial exchange, like the Chicago Board of Trade, may enjoin the theft of its market quotations while permitting a limited distribution thereof.

The invention of the instrument known as the "ticker" shortly before 1880 gave rise to the present facilities for disseminating market news, whereby every change in the prices of commodities on a commercial exchange can be electrically transmitted and displayed with such promptness, that the making

of the prices upon the exchange and their display in the offices of dealers throughout the country are practically simultaneous.

For some years prior to August, 1900, petitioner allowed the telegraph companies, without charge, to collect its quotations, and imposed no restrictions upon their sale. This and similar conduct of other like commercial exchanges brought into existence the bucket-shops.

A bucket-shop is a place, where its proprietor posts upon a blackboard market quotations of one or more of the leading commercial exchanges, and stands ready to accept from all comers bets upon the course of such blackboard prices, each "trade" being opened at the last quotation then on the blackboard, and being closed at the last quotation on the blackboard at the time of closing. A margin is exacted from each customer, and when this is exhausted according to the blackboard price, the so-called trade is at an end. The keeper takes out of each trade an arbitrary profit, miscalled a "commission," which enables him to profitably assume the risk incident to the fluctuations of the market, such risk being present for him only to the extent that the so-called purchases of his customers exceed in the aggregate their so-called sales, or *vice versa*. The market quotations are thus essential to the existence of all bucket-shops.

By reason of this indiscriminate distribution of its quotations petitioner, about August 1, 1900, adopted a plan to prevent their use in bucket-shops and to derive a revenue from its quotations. To that end it exacted from the four telegraph companies, to which

it thereafter furnished its quotations, contracts, in which they severally agreed that they would not sell such quotations to any bucket-shop, and would exact from every person, to whom they sold them, a written agreement that he would neither use them in conducting a bucket-shop, nor allow them to be taken from his office. (Rec., 10-18, 239, 243.)

Under these contracts the telegraph companies also agreed to pay, and have since then paid, to petitioner for the quotations more than $30,000 per year, and petitioner on its part agreed to take all reasonable steps to prevent persons from purloining such quotations. (Rec., 16.)

Being thus unable to purchase these quotations from the telegraph companies, many bucket-shops (and others acting in their interest) at once commenced to systematically steal the quotations by tapping telegraph wires or otherwise, and thereby an illicit trade therein was inaugurated and has since been maintained, which has to a large extent defeated petitioner's purpose to prevent the use by bucket-shops of its quotations, and threatens also to endanger its revenue therefrom.

This caused petitioner to institute numerous suits in equity (of which this is one) in the federal courts of the central west. Most of these cases are still pending and are awaiting the decision of this case.

The suit at bar was brought against these respondents at Kansas City. It is based upon the theory that the quotations are a species of property, which equity will protect by injunction. The bill sets out the contracts between petitioner

and the telegraph companies. It avers that the respondents have not acquired the quotations from these telegraph companies, but were purloining and using the same at their place of business at Kansas City. It prays that they be enjoined from doing so.

Respondents' answer denied many of the allegations of the bill, and averred that the quotations grew out of gambling transactions in petitioner's exchange hall, and that by reason thereof petitioner was keeping a bucket-shop, contrary to the criminal statute of Illinois (the prohibiting sections of which are set out on pages 993, 994 of this record) and by reason thereof relief should be denied.

Exceptions to this portion of the answer having been overruled (Rec., 58, 86) and much proof taken (mostly by respondents) touching the character of these transactions, Judge Hook decided all questions against the respondents and granted petitioner first an interlocutory, and subsequently a permanent, injunction. (See opinion, Rec., 956, 972).

Respondents perfected appeals from the interlocutory order and final decree to the Circuit Court of Appeals of the Eighth Circuit, which were consolidated (Rec., 1015), and that court decided that these transactions for future delivery were "in all essentials gambling transactions," and that by reason thereof petitioner violated this criminal statute of Illinois, and did not come into court with clean hands, nor for a lawful purpose, and reversed the decree with instructions to dismiss the bill upon the merits (see opinion, Rec., 990). Thereupon this writ of *certiorari* issued.

In another similar suit in Indiana, the Circuit Court

of Appeals of the *Seventh Circuit,* upon (to all intents and purposes) the same evidence, declined to follow this decision of the Circuit Court of Appeals in the case at bar, and directed a decree for petitioner. In that case a *certiorari* also issued, and it stands as No. 280 upon the present docket of this court.

A recital of the minor facts arising on this record will be deferred until the consideration of the questions to which they relate.

The questions that arise on this record are

(1) Is it, in point of law, a good defense to this suit, that most of the transactions, out of which these quotations arise, are gambling transactions?

(2) If so, is, in point of fact, most of such trading gambling?

(3) If so, is petitioner so responsible therefor that it should be denied the right to maintain this suit?

(4) Are these quotations *property* which a court of equity will protect by injunction?

(5) Is the contract between the petitioner and the telegraph companies respecting these quotations illegal?

ARGUMENT.

I.

IS IT, IN POINT OF LAW, A GOOD DEFENSE TO THIS SUIT THAT MOST OF THE TRANSACTIONS, OUT OF WHICH THESE QUOTATIONS ARISE, ARE GAMBLING TRANSACTIONS?

This suit was brought in *Missouri*, and was dismissed by the Circuit Court of Appeals solely by reason of a supposed violation by petitioner of a criminal statute of *Illinois*. Thus the question here is, whether the violation of a criminal statute of one state debars a plaintiff from maintaining a suit to protect his property in a federal court in another.

It is not the province of a court—state or federal—in one state to thus give effect to a criminal statute of another. It is well settled that "the penal laws of a country do not reach, in their effect, beyond the jurisdiction where they are established." In

Commonwealth v. *Green*, 17 Mass., 514, 540, it was held that the conviction of an infamous crime in another state did not render a witness incompetent, Chief Justice Parker saying:

"To refuse a man the right to be a witness on account of a conviction in another country, would be to suffer that conviction to have force here, and, in some measure, to carry it into execution."

This court approved this case and held the same way in

Logan v. *United States*, 144 U. S., 263, 303.

Why should an infraction of a foreign criminal statute incapacitate a party, when it does not a witness?

State v. *Pelican Ins. Co.*, 127 U. S., 265, 289,

where this court said:

"By the law of England and of the United States, the penal laws of a country do not reach beyond its own territory, except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the courts of another country."

The Antelope, 10 Wheat., 66, 123,

where Chief Justice Marshall said:

"The courts of no country execute the penal laws of another."

Folliott v. *Ogden*, 1 H. Blackst., 123, 135,

where it was held that a foreign attainder depriving one of his property did not prevent his suing on a bond in England, as "the penal laws of foreign countries are strictly local."

The Circuit Court of Appeals held that, because petitioner was violating a criminal statute of Illinois by maintaining at Chicago an exchange hall, where this market news originates, it did not come into the court in Missouri "with clean hands." But, if this clean-hands doctrine were otherwise applicable, violations of a penal statute in Illinois should not make a complainant's hands unclean in a Missouri court; for this would give to such statute an extra territorial effect.

But if this suit had been brought—as some of these suits have—in a federal court in Illinois, the result would be the same. Crime and its punishment are in this country creatures of statute. The penalties are such only as the particular statute creates. A depriva-

tion of the right to protect one's property by resorting to the civil courts is not, except in rare cases, and not in the particular statute under consideration, one of these penalties.

So, the enforcement of criminal statutes in Illinois, as elsewhere, is confided to certain criminal courts. It is not the function of courts of equity of Illinois—much less of federal courts of equity sitting there—to enforce criminal statutes by denying a plaintiff relief, merely because he is a criminal.

Again, all misconduct, even though criminal, by a plaintiff will not defeat his suit. To do so the misconduct must, within the well-defined limitations of the clean-hands doctrine, have been a wrong done to the defendant himself, and must have been in regard to the subject-matter in litigation.

Fuller v. *Berger*, 56 C. C. A., 588, 120 Fed., 274,

where the circuit Court of Appeals (7th Cir.) said:

"Equity is not concerned with the general morals of a complainant; the taint that is regarded must affect the particular rights asserted in his suit. * * * If the defendant can do no more than show that the complainant has committed some legal or moral offense, *which affects the defendant only as it does the public at large*, the court must grant the equitable remedy and leave the punishment of the offender to other forums. * * * Against this, appellees establish that appellant has been misusing the patented device. But how does this concern appellees more or differently than it does others?"

In case No. 280 on this term's docket, the same court (130 Fed., 507), reaffirmed this principle, and said:

"In this case the appellees, citizens of Indiana, have

never had any dealings with appellant respecting the quotations; they have not been misled or deceived by appellant in any way; and they certainly are no more concerned with or affected by appellant's violations of the common law or of the penal laws of Illinois than the general public."

Other authorities to the same effect are:

City of Chicago v. *Stock Yards*, 164 Ill., 224-238.

Bateman v. *Fargason*, 4 Fed., 32.

Ansley v. *Wilson*, 50 Ga., 421.

Langdon v. *Templeton*, 66 Vt., 173.

1 Pom. Eq., Sec. 399.

Petitioner's misconduct, if any, respecting the transactions upon its exchange, prejudicially *affects these respondents only as it does the public at large.*

Again the general dissemination of these quotations is conceded to be highly beneficial to legitimate commerce. Respondents' answer so admits (Rec., 63, 64), and respondent Christie so testified (Rec., 522, 524). So the Illinois Supreme Court has also held. (*Stock Exchange* v. *Board of Trade*, 127 Ill., 153.)

So, then, petitioner's conduct with respect to the quotations, is not at all reprehensible. It gives them to all persons desiring them for lawful purposes (See contract, Rec., 10, 18), and only withholds them, as it lawfully may, from bucket-shops. Hence, the alleged misconduct of petitioner does not, within the above rule, relate to the subject-matter of this suit—the quotations.

The Circuit Court of Appeals (Rec., 1001) does say that these quotations are "furnished by the Board of

Trade and sent out over the lines of the Telegraph Companies as a means of encouraging speculation in futures and in gambling upon the rise and fall of the market." There is, however, neither in the pleadings nor in the evidence any support for this statement. The large revenue derived by petitioner is a sufficient motive for its distributing these quotations, and is the only one shown by this record. Why then infer without proof an improper motive?

The court might, with equal propriety, decline to entertain a suit by petitioner to protect its ownership of its exchange building, on the ground that it permits gambling transactions there in violation of the criminal statute of Illinois. The building is much more responsible for, and thus more nearly related to, these transactions than are the quotations. This is in reality adding to the statutory punishment the deprivation of one of the fundamental rights of a property owner. The clean-hands doctrine does not go to this length.

There is, it is true, quite apart from this clean-hands doctrine, a principle that relief is in some cases denied from considerations of public policy. Thus, the courts have refused protection to a trade name, that is calculated to deceive the public. On the other hand, the courts in some cases, *grant* relief solely from considerations of public policy, as, for instance, in some cases where the parties are *in pari delicto*. (2 Pom. Eq., 941.) Here equity does not concern itself with either party, but considers only the public welfare, and the determining question is, does public policy require the withholding or granting of relief.

But this principle does not justify turning petitioner out of court, because the quotations are neither fictitious nor hurtful to the public. The public welfare will be best advanced by having petitioner succeed in its efforts to prevent the misuse of its quotations in bucket-shops. This the *granting* of relief would accomplish.

On the other hand, its present revenue from its quotations is not essential to the maintenance of petitioner's exchange. It neither derived revenue from, nor restricted the use of, its quotations prior to August 1, 1900. Yet for many years before that date, this same future trading took place on its exchange. Petitioner's failure in this litigation could not then reasonably do more than restore the situation existing prior to August 1, 1900. How, then, would the public be benefited by *denying* petitioner relief?

Furthermore, petitioner does not violate the Illinois bucket-shop statute (the material sections of which are set out in the opinion of the Circuit Court of Appeals), because it does not apply to commercial exchanges.

This statute in this respect has never been construed by the Illinois courts. *Soby* v. *People,* 134 Ill., 66, referred to at length in the opinion of the Circuit Court of Appeals had reference only to a *broker's* office. Its language should be confined to its facts. (*Carroll* v. *Lessee,* 16 How., at p. 286.) It does not decide that a commercial exchange is within this statute.

In construing this statute the general public policy of Illinois and its other legislation should be considered. It has been the policy of that state, as of all

commercial states of modern times, to encourage the maintenance of commercial exchanges.

As early as 1849, the great future of the grain trade of the Northwest was foreseen, and the necessity for an exchange in Chicago to facilitate that trade was apparent. In that year the Illinois legislature passed a general statute providing for the incorporation of boards of trade with such powers as are usual in the management and conduct of such institutions. (Gross' Stat. of Ill., p. 116.) The Chicago Board of Trade was incorporated originally under this general act, and continued to exist thereunder until 1859, when its usefulness to the commerce of the state having been demonstrated, the Illinois legislature granted it its present special charter (see exhibit, book of rules), thereby incorporating "the persons now composing the Board of Trade of the City of Chicago" into the present corporation. Sections 4 and 12 of that charter are as follows:

"Sec. 4. The said corporation is hereby authorized to establish such Rules, Regulations and By-Laws for the management of their business, and the mode in which it shall be transacted, as they may think proper."

"Sec. 12. Said corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management of boards of trade or chambers of commerce, or as provided in the foregoing sections of this bill."

Thus the legislature intended by this act to sanction in Chicago an exchange, which would have the powers necessary to enable it to compete successfully with rival exchanges of other cities for the grain trade of the northwest, although it then knew that exchanges give rise to much speculation.

The bucket-shop evil thereafter assumed such large proportions that Illinois, to suppress it, passed in 1887 this bucket-shop statute.

That statute and petitioner's charter are to be construed together. The later act should not be so construed as to nullify the former, unless this clearly was the legislative intent. The first act established a corporation *with perpetual life* and granted it power to maintain an exchange for the transaction of such business as might be "usual in the management of boards of trade or chambers of commerce." The second act contemplates a *forfeiture of the charter* of every corporation within its terms, if the offense therein defined is continued after a first conviction. If the Illinois legislature had, in the Act of 1887, contemplated the termination of the charter of this exchange, which plays so important a part in the commerce of the state, because of speculation in its hall—which, as we shall see, petitioner cannot stop without destroying its efficiency as an exchange—would it not have used language more plainly indicating such a purpose? The nature of the business upon petitioner's exchange in 1887 was, and was then generally known to be, the same as it is now.

Under the practical construction placed upon this statute by the courts and public officials of Illinois it does not apply to commercial exchanges. This statute requires (Sec. 4) that *every* grand jury should be specially charged to investigate violations of this act. Such has been the practice in Chicago ever since its passage; yet never has it occurred to anyone to indict petitioner, nor has the public sentiment ever thought

juries or officials derelict for not doing so. It was not until petitioner entered upon this present litigation that federal courts in other states made the discovery that Illinois had intended, by its bucket-shop statute, to suppress its large commercial exchange as well as bucket-shops.

A similar statute has since 1887 been in force in Missouri. (R. S. Mo., Sec. 2223, 2225.) Yet it has never occurred to those charged with the enforcement of that statute that it applied to the commercial exchanges at St. Louis and Kansas City, where there is the same kind of future trading as upon petitioner's exchange.

Hence, neither by reason of this Illinois statute, nor the general law, does the clean-hands doctrine apply to the case at bar.

But the general question here under discussion has another phase. While the Circuit Court of Appeals, in the case at bar, and Judge Thompson, at Cincinnati (115 Fed., 574), dismissed petitioner's suits under the clean-hands doctrine, and because of petitioner's supposed violation of this Illinois statute, Judge Adams, at St. Louis (121 Fed., 1012), held the character of the transactions, out of which the quotations arise, fatal to petitioner's recovery upon grounds that are entirely apart from the clean-hands doctrine. His decision was (1) that any property right in the quotations is, by the *transactions,* "so tainted with immorality as to preclude resort to a court of equity by complainant for its protection;" and (2) that the quotations have no value nor utility to legitimate commerce, but tend "only to excite the gambling propen-

sities of the public," and that "such is not a species of property which appeals to a court of conscience for protection."

Judge Anderson, in case No. 280, based his decision on the first of these grounds.

The decision of Judge Adams against the utility or value to commerce of these quotations, is based upon the misapprehension that there are two kinds of prices on petitioner's exchange; prices in transactions, where the property is "delivered in fact, or intended to be delivered," which he concedes would be "very valuable to the public," and "promote legitimate trade and commerce," and prices in the wagers, which have "no legitimate tendency to promote the commerce of the country."

But there is not, and in the nature of things could not, be in the same market one price, when a trade is to be closed by actual delivery, and another price for a simultaneous trade in which no delivery is contemplated. Even if the quotations originate from wagers, still, as the Circuit Court of Appeals of the Seventh Circuit said in case No. 280,

"the prices are the same for the transactions that are not wagers, and the quotations sent out show the figures at which honest dealers may secure contracts."

True, the quotations almost wholly represent prices for future delivery, but it is these that the producer and country dealer need to know. They are not concerned with the price of grain actually delivered in Chicago today, but with what the Chicago trader is today willing to pay for their grain when hereafter it shall arrive in Chicago.

Furthermore, the price for *future* delivery indicates to those in the trade the price for *immediate* delivery. The latter always is, except in case of a temporary "corner," the difference between the price for future delivery, and the cost (interest, storage, insurance, etc.), of carrying the property until such delivery time. Whenever there is a variance from this, making it profitable to do so, traders will buy the cash property and sell it for future delivery, or *vice versa*.

Again, the value of this news to legitimate commerce, is, as already stated, shown by respondents' answer and uncontradicted testimony.

Indeed, everyone familiar with this branch of commerce knows that, by the prompt dissemination of these quotations, whereby those engaged in agriculture may know almost immediately the prevailing market values, and thus avoid being overreached in sales of their products, petitioner renders a great public service.

The commercial value of market quotations, as well as of future trading, is emphasized by the recent experience of Germany in yielding to agrarian hostility to commercial exchanges in that empire. Future contracts or "time trading" in grain upon the Berlin Bourse were abolished by statute in 1896. This, it is said, was done against the judgment of the government itself, which recognized the economic advantages of such transactions. Thereupon the brokers dissolved their organization, and withdrew from the Bourse. The sequel is thus told in an instructive article, entitled "The

Berlin Bourse," in the Century Magazine of September, 1903:

"From the moment that the produce section of the Bourse quit their old quarters there was an interregnum in the grain trade of the country; the modern method of produce dealing was virtually abolished. What was the result? The 'Eldest of the Merchants' say in their report for 1900: 'At nearly every one of our meetings, at the beginning of the Bourse interregnum, we had to answer inquiries from the commissary departments of army and navy, from railway managements, municipal administrations, statistical offices, etc., for trustworthy grain prices; but we were only able to answer that we did not know.' The report goes on to show that the only persons getting any advantage from the extinction of the Produce Bourse were the provincial dealers, who charged higher premiums for their increased risks growing out of lack of Berlin quotations. In other words, they paid less to the farmers and asked higher prices from the millers.

The government at once recognized the disadvantages arising for all business interests through the lack of a produce exchange with universally accepted quotations for grain. Hence the Minister of Commerce opened negotiations with the seceded brokers several months after the dissolution of their organization, looking toward re-establishing it. These negotiations were continued for nearly three years before all parties were ready to bury the hatchet, which was done in January, 1900; and the brokers returned with more than half a victory to their old hall. Even the Agrarians had come to recognize the necessity of a produce exchange, for they had bitterly felt the lack of authoritative quotations. True, they still had the liberty to sell their crops in advance of delivery; but they found that they were unable to do this advantageously without quotations recognized by all interests, and without some board of appeal for settling disagreements as to grading. * * *

The Produce Bourse was accordingly reopened on

April 2, 1900. The government conceded to the dealers the right to resume dealings for future delivery and to publish time quotations. * * *

The abolition of the grain futures has been equally disappointing. The position of Berlin as a grain market has been seriously shaken. During the last few years the papers have frequently printed comparative quotations in the leading central markets which prove that German prices have become sluggish in responding to upward movements abroad, and that therefore German farmers are failing to get as quick an advantage from rising prices as those of other lands."

Hence the position of Judge Adams that these quotations should not be protected because they do not "promote legitimate trade and commerce" is not justified by the facts.

Is, then, the other ground of his decision well founded? It is in effect that—regardless of any misconduct of petitioner—this news is so infected or tainted by its source or origin as to become illegal. The illegality of the transactions pollutes the news of them.

The question is reduced to this: Is *market news*, whose dissemination is so helpful to commerce, to be deemed infected with illegality or beyond judicial protection, because the owner of this news maintains an exchange, where parties to most of the *transactions* it records do not contemplate actual delivery? Does the existence of a property right in news depend upon its *source*, rather than the character or utility of the news itself? Would not this subordinate the practical to the purely sentimental? A sufficient answer to these questions is furnished by two decisions of this court.

Brooks v. *Martin*, 2 Wall., 79.

Planters' Bank v. *Union Bank*, 16 Wall., 483, 499.

In the former case, two persons had joined in the purchase of soldiers' claims, which was prohibited by Act of Congress. These illegal *transactions* had resulted in money in the hands of one of the parties, and the other, Martin, filed a bill to get his share of it, and the court sustained the bill. There money, in the case at bar quotations, resulted from alleged illegal transactions. If, as the Circuit Court of Appeals holds, petitioner has violated a statute, so did Martin. If the transactions soiled the hands of petitioner, so did they the hands of Martin. If these transactions taint the quotations, so did the purchase of soldiers' claims taint the money in that case.

In the Planters' Bank case above cited, a party to an illegal sale of confederate bonds was allowed to recover from the party who made it the proceeds of such sale.

Thus, upon no recognized principle of equity, was the Circuit Court of Appeals justified in refusing to protect the property right in these quotations, even if they do grow out of transactions, in which the intention to deliver is wanting, and those transactions occur in a hall kept by petitioner in violation of a criminal statute of Illinois.

II.

ARE THE MOST OF THESE TRADES, WHOSE PRICES THESE QUOTATIONS RECORD, GAMBLING TRANSACTIONS?

This is the *ultimate* question in this case only upon the theory that the quotations can be so tainted by the transactions that a court of equity will not recog-

nize a property right in them. This theory being rejected, the ultimate question is, whether petitioner's responsibility for, and conduct respecting, the transactions upon its exchange are such as to make it an unwelcome suitor. In the solution of this question, however, the character of the transactions necessarily arises, and may properly be first considered.

These quotations are the prices in the "pits" where the trading is almost entirely for future delivery. As to these transactions, the Circuit Court of Appeals says (Rec., 1000) (italics ours):

"There is absolute unanimity in their evidence to the effect, that much the larger part of these transactions were deals wherein it was not *expected or understood* that there would be any delivery of the article nominally dealt in, but the same were carried through and settled by methods clearly devised to avoid the need of actual delivery.

The estimates of the witnesses vary as to the percentage of the transactions in which actual delivery was *contemplated* or had, running from one to fifteen per cent., thus proving that at least eighty-five and more probably ninety-five per cent. of the transactions would come under the condemnation of the Illinois statute."

The witnesses whose testimony is here referred to were members, or clerks of members, of petitioner, *selected* by respondents out of a total membership of eighteen hundred and out of several hundred members actively trading in these pits. Each witness necessarily confined his testimony to his own, or his firm's, business.

Not one of these witnesses testified that in a single trade—much less in his business as a whole—"it was not expected or understood that there would be any

delivery of the article nominally dealt in." Not one of them gave his estimate "as to the percentage of the transactions in which actual delivery was *contemplated.*" Each did give his estimate of the percentage of his firm's transactions, in which deliveries were *actually made* and this varied with the different witnesses from five to twenty-five per cent. From this, *and this alone,* the Circuit Court of Appeals found that "at least eighty-five and more probably ninety-five per cent. of the transactions" were "in all essentials gambling transactions." In other words, that court held that the mere fact that deliveries were not made at the *maturity* of these time-contracts is in itself sufficient to prove that deliveries were not *intended* when the contracts were *made.*

This view requires a consideration in detail of the nature and extent of the different kinds of business conducted on petitioner's exchange.

One class of traders, who participate largely in this future trading, are the *grain buyers.* The testimony of Mr. Marcy (Rec., 109-140), the manager of the Armour Grain Company, one of these grain buyers, stands uncontradicted in this record, and will sufficiently illustrate the business of this class. Mr. Marcy's company does a strictly merchandising business. It does not speculate at all (Rec., 113). It makes no contracts for future delivery except as a part of its grain business (Rec., 130) and except a very little commission business it does for others. The volume of its own grain business is 50,000,000 bushels a year or more. Every evening it sends from Chicago to numerous country points, offers to buy grain at a

certain price, if accepted by telegram by a certain hour the next morning. The next morning it aggregates the amount of these acceptances, and at once sells in the proper pits of petitioner's exchange *for future delivery* a like quantity of grain, such sales contemplating grain of a certain established grade. The aim of Armour Grain Company in doing this is to at once *find a place* for the grain it has bought, and thus eliminate all speculation and risk incident to the fluctuations of the market. Much of this grain, when thus bought, is not in a condition to go at once upon the market. In due time it is shipped to the Armour Grain Company at Chicago, is there inspected, put into elevators and warehouse receipts are issued therefor. If the grain is up to the grade specified in its time sales, the company frequently delivers it upon these sales. If it is not, it is necessarily sold as off-grade grain. Again, between the making of these sales for future delivery and their maturity, the Armour Company frequently finds it more profitable to divert the actual grain from Chicago to some other market, or, when it reaches Chicago, to sell it at once for export or consumption, than to hold and deliver it upon these future contracts. When sold as off-grade grain, or thus sold more profitably for export or consumption, the Armour Company, to meet its sales for future delivery, immediately upon selling the actual grain, makes, in petitioner's "pits" contracts to *purchase* the same quantity of the same kind of grain for delivery in the same month as in its previous sales. This practice is called in the trade "hedging."

Other witnesses engaged in this same kind of business, Pierce (Rec., p. 141), Weare (p. 164), Pettit (p. 182), and Martin (p. 209), testified that the amount of their hedging contracts equaled the amount of their purchases in the country, and that vast quantities of grain are actually delivered upon these hedging sales. *This evidence shows that practically all the grain brought to Chicago is thus hedged against upon petitioner's exchange.*

This record shows (see statistical book sent up as exhibit) that the receipts of wheat, corn and oats in Chicago for the year 1900 were 287,741,515 bushels. This does not represent, however, the total volume of these hedging contracts by these grain buyers. Much grain bought by them and hedged in these pits is subsequently diverted to other markets (Rec., 111, 210). Grain buyers at other points hedge on the Chicago market. Purchasers from these grain buyers, who hold and carry the grain in elevators until it goes into consumption, also hedge it in the same way (Rec., 114, 892).

The uncontradicted evidence of Mr. Marcy (Rec., 114) is that this ability to hedge is of great commercial value. It shows that before it was resorted to the grain buyer's profit in moving the grain from the farmer to a foreign market was from five to eight cents a bushel, which, by the elimination of the risk from price fluctuation by hedging, has been reduced to one and one-half to two cents a bushel, and that this hedging now forms a necessary part of the business of handling grain between the producer and the consumer.

The Circuit Court of Appeals holds illegal such of these hedging contracts by grain buyers *as are not completed by actual delivery.* This will be the more apparent from Judge Thompson's decision (115 Fed., 574), which the Circuit Court of Appeals approves, and which expressly declares these hedging transactions illegal.

The legality of this hedging can be determined by taking a single one of these transactions. The Armour Company buys 5,000 bushels of wheat, and at once proceeds to find an assured place for it by immediately selling in the "pits" an equal quantity for future delivery. Measured by the legal test usually applied to exchange transactions (*Clews* v. *Jamieson,* 182 U. S., 461), this sale is legal, unless *at the time it was made* the Armour Company did not intend delivery. Mr. Marcy clearly testified that his company did not make a future sale, until it has purchased a like amount in the country, and that the grain thus purchased is brought to Chicago and delivered upon this future contract unless, when it gets there, it does not come up to the required grade, or unless, intervening the making of the purchase in the country and the time specified in the sale for delivery, some one is willing to pay more for this grain than can be made by delivery upon the future sale. Now, when the Armour Company sells the wheat in the pit it does not know that the wheat purchased in the country will *not* grade so as to be deliverable. It is only after its inspection *in Chicago* that the Armour Company forms the intention not to deliver upon its future sale. So, too, the opportunity to sell more profitably for immediate delivery for export or consumption does not

ordinarily arise until after the grain reaches Chicago. Thus in neither contingency does the Armour Company intend not to deliver at the time it makes the hedging sale. Such intention is formed *after the sale,* and for a legitimate reason.

If this single transaction, as seems clear, does not contain the gambling intent and is valid, how can the business as a whole be illegal? If, as respects a single transaction, failure to complete the sale by actual delivery does not prove it illegal, how can the aggregate of such transactions be so regarded, merely because in a large portion of them delivery is not in fact made? Yet such is the decision of this Circuit Court of Appeals.

The evidence shows the future trading by the Armour Company in these pits to be exclusively of this class, and to aggregate in one year sales of 50,000,000 bushels, and that some of these transactions, involving 9,718,000, or about 20 per cent., were completed by actual delivery, and the balance was closed by counter purchases under circumstances already explained. Wherein does that part of these future sales of 50,000,000 bushels, which did not result in actual delivery, differ, as respects legality, from the sales of 9,718,000 bushels thereof, which were actually delivered? *The intention was the same at the time the transactions were made.*

Millers, when making large sales of flour to be delivered in the future, also hedge upon petitioner's exchange by buying for future delivery an equivalent quantity in wheat. Sometimes this wheat will be used to produce the flour, but more frequently the millers

buy upon personal inspection and in car lots the kind of wheat best suited for grinding, as it comes into the market, and then make counter sales to close their hedging purchases. So, too, millers, who accumulate in their mills wheat for future grinding, hedge by selling a like quantity for future delivery. Mr. Rice, a large Chicago miller, testified (Rec., 196) that otherwise millers would be obliged to exact a larger margin of profit to protect against the fluctuations of the market.

Of hedging by millers, the U. S. Industrial Commission (Final Report, Vol. 19, p. 186) says:

"This system, as stated by entirely trustworthy representatives of the trade, has been found absolutely necessary in order to prevent millers from assuming the extraordinary risk of changes in the market value of wheat. Only the more speculative and daring millers would undertake to fulfill future contracts without exercising this precaution of purchasing 'wheat futures.'"

Hedging is also extensively resorted to by exporters to foreign markets (Rec., 115, 143, 892) to protect against price-fluctuation during the voyage.

This hedging is also resorted to by packers (Rec., 374, 391, 786, 892), who, by the purchase of manufactured products for future delivery, protect themselves against fluctuation in the prices of the live stock, out of which these manufactured products are made.

In short, this hedging has become an essential facility in the present-day method of handling the products of the farm between the producer and the consumer.

It is impossible to attain even an approximate idea

of the volume of this hedging business upon petitioner's exchange. The brief of respondents' counsel in the lower court admitted that it "constitutes a very large part of the dealings in the pits" on such exchange. Indeed, it is a matter of common knowledge that this exchange is the principal hedging market of the world for grain dealers.

It is true that in much of the hedging by millers, and all of it done by exporters and packers, there is not, as in the hedging by grain buyers, an intention to deliver; but such hedging is in the nature of insurance against price-fluctuation. But this species of hedging is not, for this reason, any the less legal.

It is true that in ordinary transactions between a broker and his trader—which are practically the only cases in which courts have been called upon to decide the gambling issue—the test of legality is stated with sufficient accuracy by exacting an intent of both parties to deliver; for in such cases the mutual intent not to deliver sufficiently proves the gambling intent.

But not so in the case of the exporter or miller. When the former ships a cargo of wheat at San Francisco or New Orleans consigned to Liverpool, and contemporaneously sells on petitioner's exchange a like quantity of wheat for future delivery, he does not contemplate that this cargo will be available for delivery upon his future contract. Nor can he thus profit by a change in the price of wheat. What he makes upon his future sale, he loses upon his cargo, and *vice versa*. His hedging is incidental to his export transactions.

The gambler upon exchanges is one, whose only pur-

pose is to profit by the fluctuations of the market. The exporter, who thus hedges, resorts to the market, not to profit by taking a risk, but to avoid all risk. The gambling intent—and this is the real test—is with him wholly wanting. The two transactions are essentially different in intent and in legal contemplation. No court has yet declared this future trading by the exporter gambling, and no consideration of public policy requires it. Such hedging, as pointed out by the Circuit Court of Appeals (7th Cir.) in Case No. 280, is a species of "merchant's insurance" against price-fluctuation, which is no more to be condemned than is "insurance of property or life."

If these hedging contracts are legal, although not completed by actual delivery, then the decision that most of this time-trading (a very large part of which is hedging) consists of "gambling transactions" is without support in this record; for it is based solely upon the fact that in "at least eighty-five and more probably ninety-five per cent. of this trading, actual delivery is absent." The record does not show how much of the entire future trading is hedging; nor is it at all practicable to ascertain this.

In this hedging less than twenty per cent., in the case of the grain buyers, and in other kinds of hedging, a much less percentage, of this trading is completed by delivery. In order, therefore, to reach its conclusion, the Circuit Court of Appeals was obliged to treat, as it did, *all these hedging contracts as illegal.*

Hence it is unnecessary to discuss whether that court was right in its conclusions as to the percentage of deliveries to trading. While the wit-

nesses on this point were mostly members of petitioner, they were selected by respondents from firms doing a speculative business, wherein the proportion of deliveries would be much smaller than of firms doing a receiving, carrying, or shipping business. No accurate percentage of the whole could be arrived at without taking the evidence of a sufficient number of witnesses from *all* classes of traders to arrive at an average. This respondents have not attempted to do.

To continue further the consideration of the business of these grain buyers, and, as typical thereof, that of the Armour Grain Company, we have seen that eighty per cent. of its hedging sales are closed by counter purchases of the same quantity for the same month's delivery. If no method or opportunity for settling these offsetting trades were presented, the Armour Company would be compelled to await the delivery month before it could get rid of them. To obviate this and the risk and expense attending it, a system has been devised—which is recognized in petitioner's rules and is facilitated by its maintenance of a clearing house—to eliminate these practically closed trades by offsetting them. Most of this large record is taken up in showing this system of settlement.

This clearing house differs in no respect from the clearing house of banks. Its only office is to adjust money balances due between members by the payment of the least amount of money.

This system of elimination consists of what are called "direct" and "ring" settlements. The "direct" settlement is resorted to where the

Armour Company has sold to, and subsequently bought from, the *same* person a given quantity of grain, deliverable in the same month. Instead of waiting for delivery time to arrive and closing the contracts by delivery, the parties attain the same result by at once adjusting their contracts on the basis of the difference in the prices, at which the property has been sold and bought.

But in many cases the Armour Company has no grain sold to, and bought from, the *same* party, but this situation arises: It has sold for delivery in a certain month a certain quantity of grain to A and has subsequently contracted to buy from D a like quantity, deliverable in the same month. A, too, has sold a like quantiy to B, and B as sold a like quantity to C, and C has sold a like quantity to D, all deliverable in the same month. Thus the Armour Company, A, B, C and D have each bought *and* sold the same quantity of grain. Each of these parties, therefore, if no provision for prior settlement were made, would receive the grain on his or its purchase and deliver it out on his or its sale. The effect of this would be to wipe out all the contracts and *bring the grain back into the hands of the person from whom it started.* Now, in order to dispense with this useless formality and the capital, clerical force, etc., necessary to keep these offsetting trades open until delivery time, this offsetting or "ringing" system, has been adopted, and is recognized in petitioner's rules (Rule XXII, Secs. 6, 9), whereby as soon as feasible, these trades are eliminated from the books and business of the Armour Company by the adjustment of the difference

in prices. An arbitrary so-called "settlement price" is fixed each day, but this is only to more conveniently figure these differences, and does not in any way affect the result. (Rec., 578-581, 717, 774.)

It will thus be noted that neither a "direct" nor "ring" settlement takes place, unless each party to it has bought and sold the same property for delivery the same month and *consents* to the settlement. The purpose and effect of the system is, therefore, merely to avoid useless deliveries and eliminate trades that have fulfilled their purpose.

While the methods differ, the principle of this system of offsetting or elimination will be found in most commercial exchanges. Such a settlement system of the Chicago Stock Exchange was upheld in

Clews v. *Jamieson,* 182 U. S., 461.

The Chicago Stock Exchange system differs from the petitioner's only in that there the exchange itself, through its clearing house and officers, participates directly in the settling, whereas petitioner's members make their own settlements.

A similar system of the New Orleans Cotton Exchange was upheld in

Lehman v. *Feld,* 37 Fed., 852.

The Circuit Court of Appeals, in reaching its conclusion that these trades are gambling transactions, refers to this method of settlement as one of the "methods clearly devised to avoid the need of actual delivery."

But to pursue further the business of the Armour

Company—when it desires to deliver on its sales, or when it cannot offset its contracts of purchase and sale, and hence must close the same by delivery, the method of delivery is as follows:

The rules of petitioner require (Sec. 1, Rule XXI) that "all deliveries upon contracts for grain or flaxseed, unless otherwise expressly provided, shall be made by tender of regular warehouse receipts." In the absence of any further provision, the delivery could only be made by the seller sending the warehouse receipts, properly endorsed, to the office of the buyer, and there receiving payment in full for the grain, and, if such purchaser has resold, and desires to deliver, this grain to some one else, the same thing must be done. As warehouse receipts are usually endorsed in blank, a certain amount of risk attended the carrying around of the receipts themselves. (Rec., 697.) To obviate this and simplify the routine of the business petitioner has, by Sec. 2 of its Rule XXI, provided a delivery system whereby, after 11 o'clock a. m. (and on the first day of each month, before 11 o'clock also) and between 1:30 and 2:00 o'clock p. m., all deliveries are required to be made in a place designated by petitioner, and always by a notice in writing (See Rec., 685), stating in detail the warehouse receipts proposed to be delivered, the contract price, etc., signed by the issuer of such notice, which is delivered in lieu of the receipts themselves. If the person to whom this notice is first delivered desires to re-deliver the property, he does so by endorsing his name upon it, and handing it to the purchaser from him, and the rule provides that such notice, and all subsequent transfers thereof "shall

be deemed and held to be a valid and sufficient tender of property, on time contracts, * * * provided the property is actually delivered, or is shown to have been ready for delivery, in the manner and upon the terms" specified in the notice. The last recipient of the notice takes it to the issuer of it, pays for the grain on the basis of a certain delivery price arbitrarily fixed daily, and the difference between this arbitrary delivery price and the prices at which these different parties have sold or bought is collected through petitioner's clearing house. (Rec., 686-9.)

This method of delivery aids the expeditious, economical and safe transaction of business by these grain buyers, and we are at a loss to understand why counsel have made it the occasion for so much of the evidence in this record. A delivery of this kind, although symbolical, as is also delivery by warehouse receipts, is clearly a legal delivery.

Let us now consider the business of a purely speculative character. As said by the Circuit Court of Appeals in Case No. 280: "Speculation is not unlawful"; and by Judge Hammond in *Kirkpatrick* v. *Adams,* 20 Fed., 287, "Everybody has a right to speculate in prices if he does it through *bona fide* contracts for actual sale and delivery of the commodity."

There are, as every one knows, persons with capital who make a business of studying crop conditions the world over, and at times which to them seem opportune, speculate in grain by making time contracts on petitioner's exchange. If their desired profits are not realized before the time for delivery comes, they receive the grain and carry it until they think an oppor-

tune time for disposing of it has arrived, when they dispose of it either by making like time contracts on the exchange, or by exporting it or selling it to exporters, millers, etc. (Rec., 763-765.) But such time-trading is not illegal.

There are also doubtless many who avail themselves of the facilities of petitioner's exchange for making trades, which are, within the contemplation of the law, gambling transactions. But these persons are as a rule not members of the exchange. In much of the business upon petitioner's exchange (Rec., 189, 358, 827), its members, while principals as between themselves, are in reality agents for others.

Passing now to this kind of trading denominated as "speculative"—we shall best understand it by taking a single transaction. A non-member desires to speculate in grain, and to avail himself of the facilities of petitioner to do so. He gives an order to a broker, a member of petitioner, and the latter in the proper "pit" upon petitioner's exchange offers (as principal) to sell (or buy) the quantity of property in the customer's order. Another member, as principal, but acting also for a customer, by brief word of mouth, or nod or gesture, accepts the offer.

This transaction is two-fold in character, that between the non-member and his broker, and that between petitioner's two members. The former may be illegal, because the customer, with the knowledge of the broker, may desire only to speculate on the fluctuations of the market by the adjustment of differences; but this does not make the contract between the two

members unlawful. Before the law can pronounce it illegal, it must find that both parties to it (the members) intended that there should be no delivery. In most cases the broker receiving the order does not know the intention of his customer. Even if he does know it, he would not communicate it to the other member, with whom he contracts. What has taken place at the time of the making of the contract between the two members discloses no such intention.

On the contrary, petitioner's rules, subject to which all contracts are made (Rec., 440), require delivery, and this creates a presumption of legality. (*Bibb* v. *Allen*, 149 U. S., 499.) If the legality of this contract should be raised in a lawsuit between the two members, would any court, under these circumstances, declare it a gambling contract upon evidence that the customer of one of them did not intend delivery, and his broker knew it? Certainly not, because to adjudge such contract a gambling one, both parties to it (the two members) must, at the time it was made, have contemplated settlement without delivery.

To go a step further with this trade—the customer, knowing, as he must, that, if he waits until maturity of his contract the grain must be delivered (or received) by him, orders his broker to close the transaction, which the broker does by making, as principal, a counter-contract on petitioner's exchange. This would seldom be made, and then only by chance, with the same member, with whom he had made the original contract. As soon as this counter contract is made, the broker usually accounts to his customer at once for

the result to him of the transaction, because the members, by the custom of business, guarantee to their customers the performance of the contracts by the other members. (Rec., ...)

This, however, does not dispose of these contracts between the members. While the transaction as to the non-member is thus closed, his broker still has two open contracts with two different members for the same commodity, deliverable in the same month—one a contract of sale and the other a contract of purchase. If nothing intervenes before the time for delivery, this broker would then receive the grain upon his contract of purchase, and at once deliver it out upon his contract of sale. There being here an actual delivery such a transaction would be perfectly legal, although the intention of the customer was to gamble.

But this broker has—just as we have seen the Armour Company had—the same quantity bought and sold for the same month's delivery, and with the assent of other members similarly situated, he avoids a useless delivery by offsetting the trades by the same "ring" or "direct" settlement which the Armour Company and other grain buyers resort to.

At the time the broker makes for his customer these contracts, he cannot know that they will be adjusted in this way before delivery, or without delivery. He does know, however, that he must accept (or make) delivery, or forfeit his membership in petitioner, unless he is *subsequently* able to find other members with whom he has traded, who are willing to join in a "ring." If he cannot so settle, his only alternative is to accept delivery upon the purchase he made for his

customer, and then deliver out the property upon his customer's sale; and this, although the transaction as between himself and his customer, has long since been settled. Does such a settlement render illegal either of his contracts? Certainly not, because such contracts are valid in law, unless *when made* he and the other contracting member contemplated that there should be no delivery.

All the contracts for non-members are made subject to petitioner's rules, and by those rules a member may thus settle contracts of his principal and substitute others (Rule XXII, § 9), by becoming a guarantor to the principal against loss by reason of the substitution of contracts. In the operation of this ringing system it must always be that the broker has other contracts to substitute for those eliminated by the ring, unless he has been speculating on his own account, and Rule IV, Sec. 11, prohibits any member from assuming the attitude of both principal and agent toward his customer.

The foregoing statement of this single transaction explains all this speculative trading upon petitioner's exchange for non-members.

What has here been said shows that whatever is reprehensible in law exists in the transactions between the outsider and a member, and not in the transactions between the members upon the exchange.

These trades between members must, in the absence of clear proof of a mutual intention not to deliver, be presumed legal. *Bibb* v. *Allen*, 149 U. S., 499. The intention of a customer *not to* deliver may well co-exist

with the intention of his broker *to* deliver under his contract with his fellow member.

If the transactions upon the exchange are legal, this Illinois Statute would have no application here, although the transactions as between the brokers and their customers were illegal; for this statute only inhibits the keeping of a place *where* gambling transactions are made.

The Circuit Court of Appeals therefore erred in holding that the bulk of the time-trading on petitioner's exchange was "in all essentials gambling transactions."

III.

SHOULD PETITIONER BE HELD RESPONSIBLE FOR WHATEVER GAMBLING THERE IS UPON ITS EXCHANGE, AND ON THIS ACCOUNT BE DEPRIVED OF A RIGHT TO SUE TO PROTECT ITS PROPERTY IN ITS QUOTATIONS?

This, as already indicated, is the ultimate question of fact presented by the evidence as to the character of these transactions. Here it is necessary to consider somewhat the purpose and utility of the commercial exchange.

The experience of the world has shown that commercial exchanges are an essential part of every highly developed commerce. No great financial or commercial center is without one. Amsterdam as early as 1670 had its bourse, which has since become a large exchange for stocks and grain. The Bourse of Frankfort dates back beyond the last century. The Vienna

Bourse was founded in 1771. The Paris Bourse traces its origin to an edict of 1549, and now occupies a building commenced in 1808. The present Berlin Bourse dates back before the reign of Frederick the Great. The London Stock Exchange became a regular organization as early as 1762. The New York Stock Exchange was first organized as the "New York Stock and Exchange Board" in 1817. Boston, Philadelphia, Baltimore, New Orleans, St. Louis, Kansas City, Minneapolis, Milwaukee, etc., have their exchanges, each contributing materially to the commerce of its city.

The chief, if not the only real, *function* of a commercial exchange is to provide improved facilities for trade. These include an exchange hall, where its members may, between certain "market" hours, meet daily to trade, the gathering and display there of all available commercial or trade news that will enable its members to better estimate the conditions affecting future values, and thus trade more intelligently; by-laws and trade usages, which become part of, and thus simplify, the contracts of members; by-laws prescribing the manner of performing and settling contracts and providing for the deposit of securities on open contracts; by-laws providing for the speedy settlement of trade disputes by arbitration before tribunals of the exchange; by-laws exacting from members, as a condition of continued membership, a high degree of business integrity, and providing for purging the membership of those guilty of uncommercial or dishonest conduct; in short, all other available facilities, which render it easy, cheap and safe to trade.

Upon the question of the *utility* of exchanges, all

do not agree. There is, of course, a class of unthinking radicals, quite numerous in the west, who see in them only evil. Their hostility is not only to commercial exchanges, but to banks, a stable currency, corporations and many other facilities of commerce, through which some grow richer than others.

No thoughtful person, however, considers the commercial exchange as either entirely free from evil or wholly devoid of good. Its opponents concede that it aids legitimate commerce; its friends admit that it facilitates illegal and harmful speculation. The former think that the evil preponderates over the good, and that gambling is the essense, and help to commerce the incident. Its advocates, on the contrary, think that the aid it renders to commerce outweighs the evil of the speculation it gives rise to. They thus differ only as to their conception of the ratio of benefit to injury.

There is one evil, miscalled speculation, but in reality gambling, for which the exchanges are responsible, and which, with the aid of the law, they can stop without impairing their own efficiency. This is the business of bucketshops. Without the market quotations of the exchanges there would be no bucketshops. Deprive them of the quotations, and you destroy them. Realizing this, petitioner is doing what it can to keep its quotations from bucket shops. If the other leading exchanges adopt the same course, the bucketshop will go.

Other forms of illicit speculation it is more difficult to prevent. The speculative spirit is not created by exchanges. It is innate. So long as the desire for gain finds a place in the human breast, there will be, in

some form, speculation. This speculation will be always attracted to commodities that are susceptible of ready transfer. Grain is such because, when put into warehouses and divided into grades, it assumes the form of a document transferable from hand to hand. The same is true of corporate stocks. The commercial exchanges, by furnishing, in aid of legitimate commerce, improved facilities for trade in these kinds of properties, do doubtless promote improper speculation. When they create a market and its facilities, the speculators step in and avail themselves of them. The greater the efficiency with which an exchange facilitates legitimate commerce, the more it contributes to this speculation. To this extent, and to this extent only, do exchanges contribute to improper speculation, petitioner no more than the New York Stock Exchange, New Orleans Cotton Exchange, and others.

But the evil is here incapable of separation from the good. This kind of speculation cannot be stopped on exchanges without impairing their efficiency to discharge their legitimate functions. Hence they, who think the evil preponderates over the good in the exchange, would suppress the exchange, or at least all time-trading there, in order to stop speculation.

But whether it is wise to do this is essentially a political, and not a judicial, question. It concerns the public policy of a state, which it is the exclusive province of its legislature to declare. As Illinois has granted petitioner a special charter, and has not passed any statute, *which its courts have construed as prohibiting time-trading upon its exchange,* the

consideration of this case should start with the proposition, that, in maintaining its exchange and time-trading thereon, petitioner does not violate public policy.

But assuming that the Illinois statute does include commercial exchanges, it is a criminal statute, and as such, is to be strictly construed. Hence petitioner cannot be held to violate it, unless guilty of some *intentional* wrongdoing.

As the alleged "pretended" buying and selling is not "conducted" by petitioner, the only provision of this statute, which it can be said to violate, is that which prohibits the keeping of a place wherein such buying and selling is "permitted." The word "permitted" implies the doing of something that the party could reasonably prevent. Hence petitioner's misconduct, if any, must consist in its failure to make reasonable efforts to prevent trading in which delivery is not contemplated.

Thus, whether the Illinois bucketshop statute, or the general law be here the test, the question is, in what does the misconduct of petitioner consist? It transacts no business. It only maintains an exchange hall, admits and expels members, and provides rules to govern them in their relations to it, and in their transactions with each other upon its exchange. These rules, among other things, provide as follows (Rule IV):

Sec. 8. "Any member of the Association who shall be interested or associated in business with, or who shall act as the representative of, or who shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations

in the market price of any commodity—without a bona fide purchase and sale of property for an actual delivery—shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the Association; and upon complaint to and conviction thereof by the Board of Directors, shall be expelled from membership in the Association."

Sec. 9. "When any member shall be guilty of making or reporting any false or fictitious purchase or sale, * * * or when a member shall, either in the Exchange Building or elsewhere, contract to give to himself or another the option to sell or buy any of the articles dealt in on this Exchange in violation of any criminal statute of this state, he shall be expelled by the Board of Directors."

Petitioner also exacts from each of its incoming members an agreement to abide by its rules. (Rule X.)

The above rules are practically the same as in *Clews* v. *Jamieson* (182 U. S., 461), of which this court said:

"Of course, we do not say that these rules actually prevent gambling on the exchange. It is possible, if not probable, that gambling may be and is in fact carried on there, but it must be in violation of, and not pursuant to, the rules."

What more could petitioner do to prevent it?

The purely speculative transactions are not distinguishable in form or outward appearances from the others. If petitioner were to constantly surround its pits with official watchers, they could not distinguish the one kind of contract from the other. What distinguishes the transactions is the *intention* of the parties. But how can petitioner ascertain what is in the minds of the traders or their customers? As well said by Judge Hook in this case (Rec., 959):

"Common experience justifies the observation that in the great majority of cases it is impossible to secure

the requisite evidence of the gaming character of such transactions. And it is not competent to any finite being to search the minds of the participants and discover their purposes and intentions."

The quotations are likewise incapable of separation, as is self-evident from the manner in which they are collected (Rec., 235, 834, 839).

True, petitioner provides facilities for expeditiously conducting business (including time-trading), such as an exchange hall, a clearing house, a system of offsetting contracts, etc., which are a great aid to legitimate commerce. Must it deprive all its 1,800 members of these facilities, because they are susceptible of misuse, or are misused by some members or their customers? A negative answer is given to this by *Clews* v. *Jamieson* (182 U. S., 461).

Indeed, the decision of the Circuit Court of Appeals in the case at bar seems to be in direct conflict with *Clews* v. *Jamieson*. In that case the transactions under consideration arose in Illinois. This same criminal statute was there under review by this court. The lower court adjudged the transactions gambling because entered into with reference to a certain facility for ready settlement, provided by the rules of the Chicago Stock Exchange and known as trading "for the account." But this court adjudged this facility, although liable to misuse, legal and upheld the transactions made with reference to it. If we understand that decision, it upholds the action of the exchanges in providing efficient facilities for trade, *although these facilities are such as speculators may, and do, avail themselves of.* If so, is it not clear that the Circuit Court of Appeals

has in effect ignored *Clews* v. *Jamieson;* for it decided, in applying the laws of the same state, that petitioner cannot sue in the Federal courts, because its exchange—which is but the sum total of its facilities for trade—attracts much illegal speculation?

Further, is it not apparent, when the actual situation upon petitioner's exchange is understood—and to make it so has been the object of the preceding detailed statement of the methods of business there—that nothing short of a *prohibition* of all contracts for future delivery would prevent speculation, if, indeed, this would? Hence the legislature, if it intended this bucketshop statute to apply to this exchange, must have contemplated the prohibition of all time-trading thereon.

But the state of Illinois has never evinced an intention to prohibit all contracts for future delivery in order to stop illegal speculation, and in view of the recent experience of Germany in this direction, is not liable to do so. It doubtless appreciates that all speculation can no more be suppressed than can all drinking, and that, whatever may be its moral aspects, speculation upon these exchanges has a distinct commercial value. It is there made a servant of commerce. This time-trading, as already explained, is an essential part of the distributive system by which the crops are marketed. That these grain buyers may *sell* for future delivery to hedge, there must be others there—the speculators—who are willing to *buy* for future delivery. The presence of these latter creates a market—and the more of them there are the broader is this market—which, meeting and ab-

sorbing these hedging sales, carries the grain (to the profit of producers and consumers), from the time the farmers sell it in the fall, until it is absorbed during the year by the consumers.

In case No. 280, where the evidence as to the character of these quotations was substantially the same as in the case at bar, the Circuit Court of Appeals of the Seventh Circuit (130 Fed., 513) said:

"Appellant was chartered by Illinois for a lawful and useful purpose, and the association adopted and promulgated suitable by-laws and rules. We think the record fails to show that the dominant feature of the members' dealings was unlawful, much less that appellant, as a creature of the state, was violating its charter, or was *particeps criminis* in what gambling the members carried on."

Hence, even if much of this time-trading upon its exchange be gambling, petitioner is in no position, and hence under no duty, to prevent it, and its failure to do so does not constitute a violation of the Illinois statute nor such misconduct as should close against it the doors of the Federal courts.

IV.

THERE IS A PROPERTY RIGHT IN THESE QUOTATIONS WHICH EQUITY WILL PROTECT BY INJUNCTION.

These quotations originate in an exchange hall, which is private property of petitioner. All persons may be excluded from it. Petitioner's members and such employes and telegraph operators as are necessary to the transaction of business there are, as a rule, the only persons admitted to the floor of the exchange.

There is a gallery which petitioner permits visitors to enter.

On the floor of this exchange hall a place is set apart for each of the four commodities (wheat, corn, oats and provisions) most extensively traded in. These places are called "pits." The market hours (except on Saturdays) are from 9:30 a. m. to 1:15 p. m. In each of these pits the trading is by *viva voce* bidding. At each pit during the market hours is stationed a person trained to follow the course of prices in the bidding, who writes upon a piece of paper the opening price of each commodity and each change of price during the day, and immediately gives each slip of paper to a messenger, who at once delivers it to a telegraph operated in the exchange hall, who in turn transmits it over a telegraph wire to the offices in Chicago of the telegraph companies authorized by petitioner to distribute these quotations.

In two of these telegraph offices the quotations are automatically transferred to other wires running from Chicago to different parts of the country, and thus each quotation is automatically transmitted from petitioner's exchange hall directly to all parts of the country within fifteen or twenty seconds after the transaction, whose price it records. In some of the larger cities these telegraph companies re-transmit them in such way that they are automatically printed on tape in their customers' offices by means of an instrument known as a "ticker." (Rec., 235-238.)

The expense to petitioner of thus collecting these quotations on its exchange floor is about $7,000 a year. (Rec., 237, 238.)

Respondents contend that the parties to each individual transaction are entitled to, and do, know the price in that transaction, and that, therefore, the ownership of the information is in the brokers who make the transactions and their principals, and not the petitioner. But it is the knowledge of the market as an *entirety* that is the real thing of value. It is the segregation of single items collected from the different pits, immediately arranged consecutively, and put in form to be transmitted instantaneously, that constitutes this news. Neither an individual broker, nor principal, nor the brokers, nor principals in the transactions collectively, have any right to do this. Petitioner alone may.

Thus this market news is at the outset within the exclusive dominion and control of petitioner. When assembled and reduced to a form susceptible of use, it is a product of effort and expenditure by petitioner.

By the contracts between petitioner and the distributing telegraph companies, the latter agree to give these continuous quotations only to such persons (other than bucket shops) as shall respectively sign an agreement with the telegraph company and *petitioner* that such quotations shall be only for the applicant's individual use, and be confined to his business and office.

It is admitted (Rec., 84) that all persons, who get the quotations from these telegraph companies, have thus agreed to such restricted use of the quotations. (See Rec., 248, 300, 324.) The persons who thus receive them sometimes display them upon blackboards in their offices for the benefit of their customers. No other or different use of the quotations is shown. They are in no sense made public.

Thus, by means of modern electrical appliances a continuous story is told of the course of this market, from 9:30 a. m. to 1:15 p. m., to a *limited* number of persons, viz., such as do not conduct bucketshops, and sign these contracts.

In principle this method of communicating this market news is nowise different from what it would be, if the operator on the exchange floor told this story of the market through a *telephone* to this limited number of persons. Indeed, if sufficient exaggeration of sound in telephoning shall hereafter be attained to enable all persons in a room to hear the talk over the telephone, transmission by telephone may supplant the present method.

Again, thus telephoning this information cannot, in principle, be distinguished from collecting the same persons in a single hall, and there communicating to them this story of this market.

In short, this method of communicating this market news by telegraphy to this limited number of persons is not different in principle from the delivery of a lecture or the production of a play in a hall or theater before persons there assembled to listen.

Thus, there is but a restricted or limited distribution of these quotations.

The courts both in England and this country hold, *without any conflict whatever*, that market news thus distributed, is a species of property, which a court of equity will protect by injunction.

Exchange Tel. Co. v. *Gregory*, L. R. (1896), 1 Q. B., 147.

F. W. Dodge Co. v. *Construction Co.*, 183 Mass., 62.

Kiernan v. *Manhattan Tel. Co.*, 50 How. Pr., 194.

National Tel. News. Co. v. *Western Union Tel. Co.*, 56 C. C. A., 198; 119 Fed. Rep., 294.

Illinois Com. Co. v. *Cleveland Tel. Co.*, 56 C. C. A., 205; 119 Fed., 301.

Cleveland Telegraph Co. v. *Stone*, 105 Fed., 594.

Board of Trade v. *Hadden-Krull Co.*, 103 Fed., 902; s. c., 109 Fed., 705.

Opinion of Judge Hook in the case at bar, 116 Fed., 944.

That petitioner's quotations are a "species of property" is also decided in

Stock Exchange v. *Board of Trade*, 127 Ill., 153.

That this market news is too evanescent to derive any protection from the Copyright Act, a perusal of that statute will show. That it was not intended to protect news of this character is conceded by counsel and has been decided. (*National Telegraph News Co.* v. *Western Union Tel. Co., supra; Clayton* v. *Stone*, 2 Payne, 382; Fed. Cas., 2872.)

The foregoing cases extend judicial protection to news on two different theories. One theory is that this industry of news-gathering, which is the outgrowth of new trade-conditions, has presented a new subject-matter—more in the nature of a service than prop-

erty—which demands, and should receive, judicial protection against piracy. This phase is enunciated in

National Telegraph News Co. v. *Western Union Telegraph Co., supra.*

In that case the Western Union Telegraph Company was collecting at various points news relating to events there transpiring, and after accumulating it in its office by means of its wires, redistributed it through its tickers in hotels and other places of its patrons *without imposing any restrictions as to use.* A rival telegraph company, having a similar equipment, claimed the right to appropriate this news from these tickers and redistribute it over its own tickers to its patrons on the ground that the display of this news on the tickers made it common to all. The Circuit Court of Appeals of the 7th Circuit, however, affirmed a decision restraining the defendants from appropriating the news, saying:

"Is service like this to be outlawed? Is the enterprise of the great news agencies, or the independent enterprise of the great newspapers, or of the great telegraph and cable lines, to be denied appeal to the courts, against the inroads of the parasite, for no other reason than that the law, fashioned hitherto to fit the relations of authors and the public, cannot be made to fit the relations of the public and this dissimilar class of servants? Are we to fail our plain duty for mere lack of precedent? We choose, rather, to make precedent—one from which is eliminated, as immaterial, the law grown up around authorship—and we see no better way to start this precedent upon a career than by affirming the order appealed from."

This decision would seem to commend itself to the common sense of mankind. Why should the law be held incapable of adjustment to new conditions? Why

should not this news-gathering be protected by law? It would encourage enterprise in the quick dissemination of knowledge that is beneficial to commerce. Why should courts not here afford protection against pirates? Especially should they do so in the case of market quotations, as this is essential to prevent them from being misused in bucketshops.

The case at bar is, indeed, stronger than that of ordinary news agencies. These, by an expenditure of effort and expense, gather, and thereby make their own, news that originally is common to the public; while petitioner by effort and expense gathers in a building within its exclusive control, news and information which has not become common.

The other theory is derived from the analogy deducible from the law of literary property, and the principle of limited publication therein.

In the foregoing cases based on this theory, there was either an express or implied restriction upon the distribution of the news.

In *Exchange Telegraph Co. v. Gregory, supra*, the telegraph company received from the London Stock Exchange its quotations under a contract requiring the telegraph company to exact from each of its customers an agreement that the quotations "should not be sold or communicated to non-subscribers." The defendant having obtained these quotations from one of these subscribers, the telegraph company was granted an injunction. The English Court of Appeal held the quotations were property, Rigby, L. J., also saying (italics ours):

"I do not see how it can be said that because this

information *was intended to be supplied to a large section of the public* the plaintiffs are deprived of their right to protection in respect of it. They were entitled to limit the supply of that information in such lawful manner as they thought fit; and it is plain that they did contract with the persons to whom they supplied it that those persons should not, either by sending telegrams or furnishing copies, supply it to others."

In *Kiernan* v. *Manhattan Tel. Co., supra,* the Associated Press gathered abroad financial news, there accessible to everybody, cabled it to New York, and there sold it to plaintiff, who by telegraph transmitted it immediately to his customers without express restrictions as to its use by them. The court recognized the right of property in such news and protected it by injunction, saying:

"It would be an atrocious doctrine to hold that dispatches, the result of the diligence and expenditure of one man, could with impunity be pilfered and published by another. * * * Applying this principle to the case of the Associated Press, it is clear that it has a right of property in all news transmitted to it by its agents, until it abandons that right by publication. * * * Does the plaintiff abandon such right by transmitting such news to his customers? * * *

I am unable to see that it makes any difference in the principle governing written communications whether Mr. Kiernan, sitting in his office, by means of the telegraph writes his communications upon paper in the office of his customer; or whether he writes the communication in his own office and then sends it to his customers."

And after holding that, although there was no express, there was an implied, restriction of the use of the news to the offices of Mr. Kiernan's customers, the court held that the "transmission by Mr. Kiernan of his

foreign financial news to his customers was but a qualified publication, which did not forfeit his right of property therein."

In *F. W. Dodge Co.* v. *Construction Co., supra,* the Supreme Court of Massachusetts applied this principle to a case, wherein certain trade news was disseminated under the same restrictions as in the case at bar.

All the other cases above cited are suits (like the one at bar) brought by petitioner, and the courts recognized and protected its property right in its quotations. In one, *Board of Trade* v. *Hadden-Krull Co.,* Judge Seaman said:

"These market quotations are peculiar in their property use and value, and, without immediate transmission to the customer, so that he receives them simultaneously with all other customers, and before their publication generally, they possess no purchase value. To make them available, it is essential to have the quotations written or printed in some form for the information of all entitled to their use; and it appears here that they were in some instances so furnished in the 'ticker', and in others were placed on a blackboard in the office of the customer. No reason appears for finding a publication in the one method if not in the other, and I am of opinion that neither constituted a dedication to the public while limited to the use and office of the customer."

In resisting this resort to the analogy of the law of literary property, respondents' counsel raise the much-mooted question, whether the right to multiply copies after a first publication was *created* by the copyright act, or existed at common law.

The great case of *Millar* v. *Taylor,* 4 Burr., 2303, as modified by the House of Lords in *Donaldsons* v.

Becket, 4 Burr., 2408, established in England the following principles:

1. At common law an author has a right of property in, and the sole right to print and publish, his compositions.

2. This right of property is not, at common law, lost by printing and publishing; but the author has the exclusive right to multiply copies after publication.

3. This common law right was superseded by the copyright act of Anne, and since that statute the only right *after* publication rests upon a compliance with that statute.

The House of Lords modified *Millar* v. *Taylor*, but not, as counsel contend, because of the absence of a property right in literary productions at common law after publication, but because a majority of the judges were of opinion that the copyright act had abridged the common law right.

In *Wheaton* v. *Peters*, 8 Peters, 591, this court in considering the same questions, sustained the first and third propositions above, and what is said upon the second was therefore in a measure *obiter*, as is manifest from the later case of

Holmes v. *Hurst*, 174 U. S., 82,

where this court, after referring to the above cases, said (italics ours):

"While the propriety of these decisions has been the subject of a good deal of controversy among legal writers, it seems now to be considered the settled law of this country and England that the right of an author to a monopoly of his publications is measured and

determined by the copyright act—in other words, that *while a right did exist by common law*, it has been superseded by statute."

Nor does—as counsel claim—*Jefferys* v. *Boosey*, 4 H. L. C., 815 (1854), hold that at common law there was no property right after publication.

There an alien composed an opera, and assigned his right therein to another alien, who, in turn, assigned it to a native-born subject and resident of England, who took the necessary steps to comply with the English copyright law, and brought an action of *case* against an alleged English pirate. The House of Lords, overruling the Exchequer Chamber, held that the trial court did not err in directing a verdict for defendant.

As the Statute of Anne had superseded the common law, and the right of plaintiff, if any, was the creature of that statute, the sole question in that case was, whether that statute extended protection to a foreign author, not domiciled in England, or his assignee (domiciled in England), and the House of Lords decided this in the negative.

Eleven judges were summoned by the House of Lords, ten of whom gave opinions, as did the Lord Chancellor and two Lords. Of these, Justices Crompton (p. 846), Williams, Wrightman and Maule (p. 893), Baron Alderson, Lord Chief Justice Jervis, Lord Brougham and Lord St. Leonards (p. 978), either ignored the question of the right at common law, or expressly advised the Lords that a discussion of it was not necessary to a decision of the case at bar. Justices Earle (p. 873) and Cole-

ridge (p. 902) declared themselves in favor of such common law right.

Drone on Copyright, p. 116, says:

"At common law the ownership of literary property is not lost by any publication of the work. * * * When these rights are lost by publication, it is not by force of the common law, but by operation of the statute, as it has been judicially construed. This principle is put beyond doubt by the judgment pronounced by the House of Lords in 1774, in *Donaldson* v. *Becket*."

But the solution of this question is not essential to the decision of this case, because they, who deny a common law right after publication, necessarily concede that it is not lost by a *limited* or restricted publication. (Mr. Justice Yates in *Millar* v. *Taylor*, 4 Burr., 2355, 66.) This is necessarily so, because otherwise the first production of a play or the first delivery of a lecture would terminate the exclusive right in it.

The statute of Anne protected the author of a play only in his exclusive right to *publish* in prints, but not in that of public representation. That was not modified until the St. 3 & 4, Will. IV, c. 15, and subsequently by that of 5th & 6th of Vict., C. 45. In this country it was not until August, 1856, that the playwright's exclusive right to *produce* a drama, or authorize others to do so, was recognized by *statute*.

Nor does the present statute protect a lecturer's property in a lecture, or that of a writer in a drama, that is not printed and copyrighted.

Yet the courts *under the principles of the common law* still protect this property right of the lecturer and the playwright upon the theory that the delivery of a lecture, or the production of a play, in a hall or

theatre, before a limited number of persons, is but a *limited* publication, and not such a one as destroys the common law right, or requires a resort to the copyright laws. In

Tompkins v. *Halleck*, 133 Mass., 32,

a drama never copyrighted nor printed, was produced at a theater, and one Byron, with the intention of reproducing it, attended frequently and after each performance dictated as much as he could remember to a stenographer until the copy was completed, and when he was about to cause its production, a court of equity was successfully appealed to by a purchaser from the playwright for an injunction. The court, after overruling *Keene* v. *Kimball*, 16 Gray, 545, said:

"But the representation of an unprinted work upon the stage is not a publication which will deprive the author or his assignee of his rights of property therein. * * * Nor will it deprive him of his power to prevent a publication in print thereof by another. * * * Nor can we perceive why it should deprive him of his right to restrain the public representation thereof by another. * * * The implied contract of the author of a play, which is not printed or copyrighted, with the spectator, is closely analogous to that of the lecturer with his pupil. * * * The special use of his play made by the author, for his own advantage, by a representation thereof for money, is not an abandonment of his property nor a complete dedication of it to the public, but is entirely consistent with an exclusive right to control such representation."

Palmer v. *DeWitt*, 47 N. Y., 532.

There an injunction issued to protect the property in an unprinted play against one proposing to print it. On the question of publication, the court said:

"So far as is disclosed by the case the drama remained in manuscript until printed by the defendant,

and there is no claim that it has been published by the author or plaintiff, or with their assent, except by public performance on the stage; and if it has not by that act become *publici juris* it still remains the private property of the author or his assignee, who alone have the exclusive right to it, and may prevent its publication. When a literary work is exhibited for a particular purpose, or to a limited number of persons, it will not be construed as a general gift or authority for any purpose of profit or publication by others. An author retains his right in his manuscript until he relinquishes it by contract, or some unequivocal act indicating an *intent* to dedicate it to the public. An unqualified publication by printing and offering for sale is such a dedication. * * * Lectures and plays are not, by their public delivery or performance, in the presence of all who choose to attend, so dedicated to the public that they can be printed and published without the author's permission. * * * The permission to act a play at a public theatre does not amount to an abandonment by the author of his title to it, or to a dedication of it to the public."

Other cases applying the same principle to dramas, the exhibition of paintings, etc., are:

Macklin v. *Richardson*, Ambl., 694;

Crowe v. *Aiken*, 2 Biss., 208; Fed. Cas. No. 3441.

Albert v. *Strange*, 2 DeG. S. & M., 652.

Turner v. *Robinson*, 10 Irish Ch., 121.

The same rule applies in the case of lectures.

Abernathy v. *Hutchinson*, 1 Hall & Tw., 28.

There the London Lancet was publishing, without the sanction of the lecturer, medical lectures which were being delivered to a class of students. Lord Chancellor Eldon sustained the right of injunction, and said that he was "clearly of opinion

that when persons were admitted as pupils or otherwise to hear these lectures, although they were orally delivered, and although the parties might go to the extent, if they were able to do so, of putting down the whole by means of shorthand, yet they could do that only for the purposes of their own information, and could not publish for profit that which they had not obtained the right of selling;" and that "the injunction ought to go upon the ground of property."

Caird v. *Sime*, L. R. (1887), 12 H. of L., 326.

In that case the House of Lords decided that the delivering of lectures by a professor of a publicly endowed university to students there did not constitute a dedication thereof to the public.

Lord Watson said:

"The only question which we have to decide is whether the oral delivery of the appellant's lectures to the students attending his class is, in law, equivalent to communication to the public.

The author's right of property in his unpublished work being undoubted, it has also been settled that he may communicate it to others under such limitations as will not interfere with the continuance of the right. * * * The principle which pervades the whole of that reasoning is, that where the persons present at a lecture are not the general public, but a limited class of the public, selected and admitted for the sole and special purpose of receiving individual instruction, they may make any use they can of the lectures, to the extent of taking it down in shorthand for their own information and improvement; but cannot publish it. If that be the real character of the relation between the lecturer and those whom he addressed, it is immaterial whether they are selected by himself or others, so long as it is a matter

of express stipulation, or of reasonable implication, that the duty which he undertakes is limited to giving personal instruction to the individuals composing his audience."

In *Bartlette* v. *Crittendon*, 4 McLean, 300 (Fed. Cases, No. 1082), plaintiff had invented a new system of bookkeeping, and was maintaining a school in which to teach it. A publishing firm got possession of one of the copies of the manuscript describing the system, but was enjoined from publishing it, the court saying:

"Copies of the manuscript were taken for the benefit of his pupils and to enable them to teach others. This, from the facts and circumstances of the case, seems to have been the extent of the complainant's consent. * * * The inquiry is, does such a publication constitute an abandonment? * * * The students of Bartlette, who made these copies, have a right to them and to their use as originally intended. But they have no right to a use which was not in the contemplation of the complainant and of themselves when the consent was first given. Nor can they by suffering others to copy the manuscript give a greater license than was vested in themselves."

Hence petitioner has a property right in the quotations despite the restricted distribution thereof above stated.

It is admitted (Rec., 194) that the respondents were, when this bill was filed, posting petitioner's continuous quotations, and it is shown (Rec., 526, 566, 312, 324), that they were not acquiring them from any of the telegraph companies authorized by petitioner to distribute them. Hence they were purloining these quotations, or acquiring them from others who did so. To prevent this an injunction is the only adequate remedy, and the Circuit Court properly granted one.

V.

THE CONTRACT BETWEEN PETITIONER AND THE TELEGRAPH COMPANIES IS NOT ILLEGAL.

If the contract be illegal, and petitioner were suing to *enforce* it, or were interposing it as a defense to a suit by respondents to obtain from petitioner the quotations, the question of its illegality would arise.

But such is not the case. Respondents have not applied for the quotations. How can they defeat a suit to enjoin them from purloining petitioner's property by alleging that it has made an illegal contract respecting its sale? But as other pending suits do involve the legality of this contract, we proceed to consider it.

Counsel contend that the contract is illegal because its restriction upon the distribution of these quotations violates (1) the general law; (2) Sherman Anti-trust Act; and (3) the Missouri anti-trust statute.

The restriction upon the distribution of the quotations is only partial. The contract recognizes two kinds of quotations, continuous and periodic quotations. (Rec., 17.) The latter consist of those, wherein the price of any commodity is quoted at intervals of ten minutes or more. The requirements of farmers, country grain dealers; millers, etc., are adequately met by knowing the price of grain on petitioner's exchange every ten minutes or more. Thus a large demand has grown up in the West for this kind of quotation service, which the telegraph companies are by the contract authorized to,

and do, render without restriction or discrimination. The respondent company is receiving these periodic quotations from one of these telegraph companies (Rec., 194), and the decree of the Circuit Court does not interfere with this. Respondents also purloin the *continuous* quotations.

The *only* restriction in the contract is upon the distribution of *continuous* quotations. These constitute every successive change during market hours in the prices of the commodities most actively dealt in on petitioner's exchange. The almost instantaneous distribution of these brings the recipients of them, as it were, into constant presence with the market itself. This class of quotations are as a rule sought only by other exchanges, brokers, and bucket shops. In the latter they are, as already shown, essential to the so-called trading there.

Again, the *only* restriction imposed upon the distribution of these continuous quotations is, that they shall not be given to bucket shops. The telegraph companies agree (Rec., 11) that they "will not knowingly furnish or sell, directly or indirectly, said continuous quotations to any person, firm or corporation conducting a bucket shop;" and the contract also provides that "the procedure to be adopted for the purpose of determining whether any applicant for such continuous quotations * * * contemplates using them * * * for any of the prohibited purposes aforesaid" shall be the exaction from such applicant of a written application (Rec., 11, 12) in which he agrees that he is not keeping, and will not conduct, a bucket shop, nor use such quotations therein. Upon the re-

ceipt of this an investigation into the business of the applicant by the petitioner is provided for.

The contract further provides (Rec., 17):

"The only intent and purpose hereof, being to prevent the misuse of said quotations for said unlawful purposes, or in said unlawful business, and not to discriminate between persons desiring them for other than said prohibited purposes."

From these several provisions considered together, as they should be, it is apparent that the contract contemplates no discrimination except against bucket shops.

Counsel, however, contend that the specific language used in the application (Rec., 12) extends the restriction to others than keepers of bucket shops. Here, however, they overlook the fact that this language has a recognized legal meaning. It is the Congressional definition of a bucket shop, and is taken, word for word, from the Act of Congress imposing a tax on bucket shops. (II Supp. U. S. Rev. Stat., 1519.) That this language was by Congress deemed an accurate definition of a bucket shop is apparent from the statements of Senator Aldrich and Chairman Payne in reporting the bill to their respective Houses. (Cong. Rec., Vol. 34, No. 47, p. 2205, 3595.)

This language applies only to keepers of places wherein is conducted the *business* of making or offering to make contracts wherein the parties contemplate or intend that the contract may be closed upon, or with reference to, the quotations of an exchange *and* without a *bona fide* transaction on such exchange, or contemplate that the transaction may be deemed closed when the market quotations of an exchange *reach a certain figure*. In thus referring to the *making* of con-

tracts in which the parties contemplate or intend, etc., such intent in the *making*—that is, at the time of the making of such contracts—is clearly meant. The legal test of a gambling transaction is, whether delivery is intended when the contract is made. How can it be said that a delivery is contemplated when the parties, at the time they make the contract, contemplate that the trade *may be* closed, not by delivery, but on the basis of the quotations of an exchange, or contemplate that it may be deemed closed without delivery, and when the quotations of an exchange *reach a certain figure.*

This is the distinguishing feature of a bucket shop. In a legitimate transaction of purchase and sale the actual delivery of the property is intended, not the closing of the contract upon quotations. All contracts for future delivery upon petitioner's exchange (and other exchanges) when not completed by delivery, are closed by making counter-trades in the open market at the best price the broker can obtain there.

On the other hand, in every bucket shop the parties agree upon a certain margin (usually paid by the customer in advance) which limits his loss. The price to which this sum carries the bet is figured, and when the blackboard quotation reaches this price, the trade is wiped out or "closes itself."

This court will see with what accuracy Congress has defined a bucket shop by reading the description of its methods contained in the opinion in

Christie Co. v. *Board of Trade,* 94 Ill. App., 229,

where the court adjudged to be a bucket shop the

Christie-Street Commission Company of Kansas City, to whose office, clerks, customers, etc., after that decision, the respondent company succeeded. (Rec., 544, 546.)

1. Leaving out of view for the present the Federal and Missouri anti-trust statutes, the question is, whether, under the *general law,* either petitioner or these contracting telegraph companies are under a legal duty to furnish these quotations to bucket shops. But as such duty is only co-extensive with the *right* of bucket shops to these quotations, the real question is have bucket shops such legal right.

In support of the affirmative of this question respondent's counsel contend (1) that *petitioner* may not discriminate against bucket shops, and (2) that in any event, a telegraph company may not, because it is bound, as a common carrier, to serve all alike.

Under this contract, as will be presently shown, petitioner is the real distributor of these quotations, and the telegraph companies only the agencies selected by it therefor. But as respects the question now under consideration this is immaterial. When this restriction upon distribution is imposed by the exchange, bucket shops are not, under the authorities, entitled to the quotations, either from the exchange or distributing telegraph companies.

None contends that petitioner is under any charter, or other legal duty to collect or give out these quotations. All concede that it may at any time cease doing so, as it once did for a period of two years. (Rec., 346.)

It is, however, the law of Illinois that, because

petitioner has permitted their distribution for a number of years, its quotations (being a species of property) have become impressed with a "public use" to such an extent that, if distributed at all, they must be given without discrimination to all desiring them *for lawful purposes.*

Stock Exchange v. *Board of Trade,* 127 Ill., 153.

Other courts disagree with this decision, holding that it is solely the province of the *legislature* to impress property with a "public use." (*Ladd* v. *F. C. P. & M. Co.,* 53 Tex., 172; *Delaware R. R. Co.* v. *Central Co.,* 45 N. J. Eq., 50; *State* v. *Ass. Press,* 159 Mo., 424; *Matter of Renville,* 46 App. Div., 37.) As, however, the contract at bar contemplates the distribution of the quotations to all who desire them for lawful purposes, and thus conforms to this Illinois decision, the question whether this "public use" theory is in law a correct one is not here material. Nor is it ever likely to become so. For it will always be the self interest of this, as well as every other, exchange to permit the sale of its quotations to all but bucket shops. This gives to an exchange a prominence over the other exchanges, for whose quotations there is not sufficient demand to justify their distribution. It helps to maintain petitioner's importance as a grain market.

It is, however, no longer open to question in Illinois that bucket shops are not entitled to these quotations either from petitioner or the *distributing telegraph companies.*

Central Exchange v. *Board of Trade,* 196 Ill., 396.

That case arose in 1900, and involved the contract between petitioner and one of the present distributing telegraph companies, shown on pages 242 to 246 of this record. That appellant, a bucket shop, under false pretenses and by signing one of these applications obtained petitioner's quotations, and by a bill against petitioner *and the telegraph company,* sought to enjoin their withdrawal. The trial judge decreed for the bucket shop on the ground that petitioner's quotations should be absolutely unrestricted. But the Supreme Court sustained a reversal of the case, because the quotations were by complainant used in a bucket shop, saying:

"Appellant was not entitled to any relief of that character. In this respect the case differs materially from *New York and Chicago Grain Exchange* v. *Board of Trade,* 127 Ill., 152."

In Kentucky the same rule is declared in

Smith v. *Western Union Tel. Co.,* 84 Ky., 664,

where the keeper of a bucket shop filed a bill against the *telegraph company* to compel it to continue to furnish complainant petitioner's quotations. In

Bryant v. *W. U. Tel. Co.,* 17 Fed., 825,

a bucket shop filed a bill against the *telegraph company* to prevent it from withdrawing petitioner's quotations, but the court adjudged complainant not entitled to them, because petitioner prohibited the telegraph company from furnishing them to customers of that class.

Such also is the law of New York.

In re Renville, 61 N. Y. Supp., 549, 46 App. Div., 37,

which was *mandamus* against the Western Union Telegraph Company to compel it to furnish the quotations

of the New York Stock Exchange. The defense interposed was that the exchange itself collected the quotations and furnished them to the telegraph company (as does petitioner in the present case), and that to prevent the illicit use of the quotations by bucket shops, the stock exchange required the telegraph company to first submit to it all applications for quotations, the contract, however, providing that the telegraph company might sell the quotations to all persons except bucket shops. The Supreme Court (Appellate Division, First Dept.) denied the mandamus, and added:

"An entirely different question was presented when the respondents [telegraph companies] procured the information themselves, and furnished such information to the public. It may be that under such circumstances the respondents were bound to furnish the information thus collected to all persons who were willing to comply with the conditions imposed by the respondents as a condition for rendering the services."

See, also,

Bradley v. *Western Union Tel. Co.*, 9 Cin. Law Bull., 223.

The text writers also agree that a telegraph company need not sell quotations to bucket shops.

27 Am. & Eng. Ency. of Law (2nd Ed.), 1039, 1094.

"The company may make and enforce a regulation under which it will not accept for transmission any message relating to a gambling transaction."

Telegraph companies "may lawfully refuse to furnish their instruments or reports to a gambling place, even though they may have contracted to do so, since they cannot be under an obligation to forward an illegal undertaking."

In Gray on Telegraph, 19, note, it is said:

"Assuming that a telegraph company is under an obligation of this nature [that of serving all those who choose to employ it, to the extent to which it makes a business of doing so for the public generally], it is nevertheless under no obligation to serve in this way one who intends to use the 'commercial news' for illegal purposes,—one, for instance, who carries on a 'bucket shop.' "

In Illinois, where the contract under consideration was made, and in Missouri, where the respondents transact business, their right to receive the quotations, and the duty of petitioner or the telegraph companies to furnish them, are expressly negatived by a criminal statute prohibiting any person or corporation from communicating the quotations to a bucket shops. (R. S. of Mo., 1889, Sec. 2338; Bucket-Shop Statute of Ill., Rec., 994.)

As already indicated, it makes no difference in the application of this principle of law, if the telegraph companies be regarded as purchasers of this news from petitioner. It is true that some courts hold that the duty of a common carrier, like a telephone company, to serve all alike, cannot be lawfully restricted by a contract of purchase of *apparatus used in its service as a common carrier.* Such is *State* v. *Bell Telephone Co.,* 23 Fed., relied on by respondents, the contrary view being ably presented in *American Telegraph Co.* v. *Connecticut Tel. Co.,* 49 Conn., 352.

But while a telegraph company is doubtless in a sense a common carrier as respects the transmission of messages for hire, there is nothing in the character of

a common carrier, which prevents one from also engaging in other business. A railroad company is not a common carrier as respects a coal business transacted by it. The Pullman Company, though a common carrier in its sleeping-car service, is not required to serve all alike in its business of manufacturing and selling cars. Why, then, should a telegraph company, as respects its purchase and sale of news, be regarded as a common carrier? It must purchase the news upon such conditions as the seller may lawfully impose.

Any other rule would impose upon such companies an unreasonable restriction, as this case shows. All concede that petitioner is not obliged to sell this news at all. For eight months these telegraph companies endeavored to get this news from it without restriction, and in doing so, deprived during that time the entire public of these quotations. Being, however, obliged to choose between accepting them on these terms, and not getting them at all, they wisely accepted petitioner's terms and thus were enabled to thereafter furnish the quotations to the many persons throughout the country who desired them for lawful purposes. Why may not, then, these dealers in this news, even though common carriers in other branches of their business, in order to get the news to distribute, agree that they will comply with such conditions respecting sale as *petitioner may lawfully impose.*

Petitioner and the telegraph companies having then the right to withhold the quotations from bucket shops, clearly may establish such reasonable regulations re-

specting their distribution as will effectuate this purpose. In

Sullivan v. *Postal Tel. Cable Co.*, 123 Fed., 411,

the Circuit Court of Appeals (7th Cir.) expressly held that it is "a reasonable regulation to require the applicants to sign the contract" or application here in controversy. Otherwise the restriction against bucket shops would be incapable of enforcement.

Nor can it be material whether petitioner, or the telegraph company, upon the receipt of the application, verifies its recitals by investigation. One or the other must primarily do so. The machinery adopted for doing so is the only feasible one. The contract contemplates that petitioner shall make this investigation in good faith. An arbitrary refusal of an application is not contemplated by the contract, but would violate it. The contract does not, as counsel claim, make petitioner the sole or arbitrary judge of those entitled to the quotations. The validity of the contract is to be tested by what it authorizes, and not by what it impliedly prohibits.

Hence this contract, in prohibiting the distribution of these quotations to bucket shops, does not violate any general principle of law.

2. Counsel next contend that it violates the Sherman Anti-trust Act. (1 Sup. R. S., 762.)

The first step here is to ascertain the real essence of the arrangement between petitioner and the telegraph companies for the distribution of these quotations.

Four telegraph companies are receiving and distributing the quotations,—the Cleveland Telegraph

Company, a small local company, distributing the quotations only in Chicago, and, therefore, engaged in no interstate commerce; another small company, which distributes the quotations only in Milwaukee (Rec., 246), with each of whom petitioner has made a separate contract, and the two general telegraph companies, the Western Union and the Postal Telegraph-Cable, with whom a joint contract has been made. As only the two latter companies serve the territory of respondents, or any of the defendants in pending suits, the real relation of petitioner to the distribution of these quotations may here be determined from its contract with these two large companies. (Rec., 10.)

While there are one or two phrases of this contract that indicate a *sale* of these quotations to the telegraph companies, when the contract is considered in its entirety, it will be found that petitioner is the real distributor of these quotations and employs the telegraph companies as its agencies in their distribution. The contract provides (1) that petitioner shall collect the quotations and give them to these telegraph companies; (2) that each company shall take from each applicant a contract, in which he stipulates with that company and the "*Board of Trade of the City of Chicago,*" respecting the use of the quotations; (3) that such quotations are to be transmitted to the applicant only after petitioner has had time to investigate, and has acted upon the application, and (4) that petitioner may, within the limitation of the contract, require that an applicant shall cease to receive the quotations.

In legal effect this is a contract by which the telegraph companies, as carriers, agree to transmit this

news for petitioner to certain persons to be designated by it, and accept from petitioner as compensation for such service all that can be realized from the quotations in excess of $30,000 per year, these telegraph companies jointly guaranteeing that such distribution shall net petitioner that sum.

That petitioner, and not the telegraph company, was the real distributor of the quotations, is the view taken in

Stock Exchange v. *Board of Trade,* 127 Ill., 153,

where the telegraph company paid petitioner $9,000 per year for its quotations, and the latter through its employes collected the quotations upon its exchange—as it does at present—and indicated to the telegraph company the persons, to whom the quotations were to be sent, and the court, although the telegraph company was also a defendant, treated petitioner as the distributor of the quotatations, as is apparent from the following extract of the opinion (p. 166):

"We do not wish to be understood as holding that the Board of Trade is bound, by law, to continue the business of collecting, and furnishing to the public, market quotations, or that it may not voluntarily abandon such business; but we hold, that so long as it continues to carry it on, either directly or indirectly, it must do so without unjust discrimination as to persons, and must furnish market quotations to all who may desire to obtain them for lawful purposes, and upon the same terms."

This is the view also taken in

Bryant v. *Western Union Tel. Co.,* 17 Fed., 826.

Wilson v. *N. Y. Commercial Tel. Co.*, 3 N. Y. Supp., 633.

In re Renville, 61 N. Y. Supp., *supra* (already cited).

In this view the Sherman Act has no application here. The sale of these quotations to persons outside of Illinois is doubtless interstate commerce, because delivery of the quotations starts in one state (Illinois) and ends in another. That law provides:

"Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. * * *

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, * * * shall be deemed guilty of a misdemeanor * * *."

But that act does not require an owner to sell his property, nor prescribe the persons to whom he shall sell it, nor compel him to sell to all because he sells to some. In a sense one enjoys a monopoly through the ownership of property, whenever it is different in kind from all property owned by others. In this sense petitioner enjoys a legal monopoly of its quotations, because there are none others like them. This also is the only kind of monopoly that Congress has conferred on a patentee.

But this is not the kind of monopoly that the Sherman Act aims to prevent, as is well shown in

Whitwell v. *Continental Tobacco Co.*, 60 C. C. A., 290, 125 Fed., 454,

where a corporation manufacturing tobacco, through

its selling agent, refused to sell to those who desired to purchase, on terms that would be profitable to them, unless they refrained from dealing in the goods of the company's competitors, and this was claimed to violate the Sherman Act. But the Circuit Court of Appeals (8th Cir.) held otherwise, saying:

"The tobacco company and its employe were not required, like competitors engaged in public or quasi-public service, to sell to all applicants who sought to buy, or to sell to all intending purchasers at the same prices. They had the right to select their customers, to sell and to refuse to sell to whomsoever they chose, and to fix different prices for sales of the same commodities to different persons."

Hence petitioner, being the owner of and itself distributing these quotations, does not, by refusing to sell to bucket shops, contract, combine, or conspire in restraint of trade, nor attempt to monopolize trade within the meaning of this anti-trust act.

Nor, if the telegraph companies be regarded as the purchasers of these quotations, would this contract violate that act.

That "competition is the life of trade" has always been a maxim of the common law. From this has resulted the hostility which that law has always manifested to what have come to be known as contracts or combinations in "restraint of trade." The law on this subject was in 1711 so elaborately reviewed by Parker, C. J., in *Mitchel* v. *Reynolds*, 1 Peere Williams's Rep., 181, that this case has frequently been said to be the foundation of the rule. Many of the minor reasons there given for this principle have become obsolete, leaving as its real basis the purpose to preserve free competition in trade.

The cases to which this common law principle has been applied are all cases where one has agreed not to pursue a particular calling or profession, or conduct a particular business, or cases involving contracts, whose tendency or effect was to reduce the number of competitive buyers or sellers of property or services; in short, contracts whose tendency or effect was *to lessen or eliminate competition among different persons.*

No case, we think, will be found where the principle has been held to impair the right of an owner of property to impose upon a purchaser from him the same restrictions on subsequent sales which such owner, in selling, might himself observe. An owner of property—who is under no legal duty to sell at all, and may refuse to sell to a certain class of persons as well as fix the price at which to sell,—may also in selling to another, impose the same restrictions upon the latter's selling, without making the transaction an illegal restraint of trade at common law.

Elliman v. *Carrington,* L. R., 1901, 2 Chcy. Div., 275.

There manufacturers of goods restricted the price at which retailers should sell them, and the court held this not an illegal restraint of trade, saying (p. 278):

"But it is necessary to see what the contract really is. * * * They [the manufacturers] are not bound to sell the embrocation at all; they are not bound to manufacture it. They are at liberty to do as they please, and when they have manufactured it they are at liberty to sell it at whatever price they choose to fix—it may be a prohibitive one, or it may be such a small price that they cannot make any profit out of it. * * * Why should not Messrs. Elliman be at liberty to fix the price in that way? * * * It is

said that it is in restraint of trade. In one sense it is, but it is just as much and no more in restraint of trade for Ellimans to say that they will not sell at all. It seems to me that what is restraint of trade as regards Carrington & Son is really the liberty of trade as regards Ellimans. * * * It is merely a question whether a man is entitled when he is selling his own goods to make a bargain as to the use to be made of them by the purchaser. It is said the contract is against public policy; but that phrase merely embodies, for the present purpose, the great principle of restraint of trade, and to say that it is to prevent Messrs. Elliman from exercising their own discretion seems to me to be applying a well settled principle of law to facts to which it cannot have any possible application."

Fowle v. *Park,* 131 U. S., 88,

where this court adjudged not an illegal restraint upon trade a contract between the owner of a patent medicine and several purchasers from him, which provided that each of the latter should confine his sales to a certain territory, and all should maintain a certain price.

Bement v. *National Harrow Co.,* 186 U. S., 70,

where contracts in which a patentee restricted the price, at which his licensee should sell, prohibited the licensee from making similar implements under other patents, and granted an exclusive license, were held not to violate the act of Congress. This court said:

"That statute clearly does not refer to that kind of a restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used and the price to be demanded therefor. * * *

The owner of a patented article can, of course, charge such price as he may choose, and the owner of a patent may assign it or sell the right to manufacture

and sell the article patented upon the condition that the assignee shall charge a certain amount for such article."

The fact that in these cases the property arose out of patents adds nothing, as the exclusive proprietorship conferred by the patent laws can in the nature of things be no greater than petitioner's exclusive ownership of its quotations.

These cases seem conclusive that this contract does not, in requiring the telegraph companies to withhold the quotations from bucket shops, violate this act of Congress.

If it be the law, which we deny, that such conditions by a patentee or other owner must be reasonable, still this contract is not illegal, because it certainly is reasonable to confine the quotations to lawful traders.

Nor is the principle varied by the fact that the purchaser is a common carrier, because, as already shown, a common carrier is under no legal duty to furnish these quotations to bucket shops.

For other reasons this act does not apply here. Under the common law, as already shown, all restrictions were not, in a legal sense, "restraints upon trade." The latter were only such as arrested the operation of the general law of competition. They became a well defined class of trade restrictions, and did not, as already shown, include such restrictions as the contract at bar contains.

As said by the Chief Justice (156 U. S., 16):

"It was in the light of well-settled principles that the act of July 2, 1890, was framed."

And by Justice Harlan (193 U. S., 338):

"The rule of competition prescribed by Congress was not at all new in trade or commerce."

The purpose of that act was to render more effective, in interstate and international commerce, the common law rule of free competition. While the common law distinction between reasonable and unreasonable "restraints of trade" seems to be done away with, there is nothing, either in the act or in this court's decisions under it, to justify the claim that its purpose was to change the *kind* or *class* of contracts which fall within the definition of a "restraint of trade." In all the cases in which this court has held the act applicable, the necessary tendency of the restriction was to deprive the public of the advantages that flow from free competition.

As said by this court in

Hopkins v. *United States,* 171 U. S., 578, 600,

"The act of Congress must have a reasonable construction or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it."

This court also said in

Anderson v. *United States,* 171 U. S., 604, 615,

"Where the subject-matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the

agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object. As is said in *Smith* v. *Alabama*, 124 U. S., 465, 473: 'There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations.' The same is true as to certain kinds of agreements entered into between persons engaged in the same business for the direct and *bona fide* purpose of properly and reasonably regulating the conduct of their business among themselves and with the public. If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though only indirectly and unintentionally, affect interstate trade or commerce, in that event we think the agreement would be good. Otherwise, there is scarcely any agreement among men which has interstate or foreign commerce for its subject that may not remotely be said to, in some obscure way, affect that commerce and to be therefore void."

To the same effect is

United States v. *Joint Traffic Assn.*, 171 U. S., at page 568.

The only purpose of the act, as appears by its title, is to protect *trade and commerce.* It only denounces restraints of, or attempts to monopolize, trade or commerce. It is neither the purpose nor the effect of the contract at bar to place any restraint upon trade or commerce. The restriction, when entirely effective, will not lessen the volume of legitimate commerce. It will only prevent the use of petitioner's quotations in gambling. *Gambling is not commerce.* The interstate commerce clause of the constitution, upon which

this Sherman Act rests, aims to "protect interstate commerce, but does not protect interstate gambling," as said in

Alexander v. *State,* 86 Ga., 246,

in upholding a statute prohibiting bucket shops against a claim that it encroached upon the power of Congress to regulate interstate commerce.

How, then, under these rules for construing this act can a contract preventing the sale of quotations to bucket shops be deemed within this act an illegal restraint of trade? Such is not its purpose or effect. It only seeks to fairly and reasonably regulate, in a way to promote the public good, the distribution of these quotations.

If the intent of Congress, in passing this act was to require the sale of these quotations to bucket shops, then *statutes,* as well as contracts, which conflict with it in interstate commerce, are condemned. State criminal statutes, like those of Illinois and Missouri, which prohibit the distribution of quotations to bucket shops within the state, are nullified whenever the transmission is interstate.

These statutes were in force when the Sherman Act was passed. They promote public welfare. They were passed in the exercise of the state's police power. Doubtless that power must yield, when necessary, to the paramount power of Congress to regulate commerce; but this court should not, in the absence of clear language, assume that Congress intended by this act to nullify these state statutes, if indeed it lawfully might do so. (*Sherlock* v. *Alling,* 93 U. S., 99; *Plumley* v. *Massachusetts,* 155 U. S., 461; *Patterson* v. *Ken-*

tucky, 97 U. S., 501; *Nashville Ry.* v. *Alabama*, 128 U. S., 96; *Hennington* v. *Georgia*, 163 U. S., 299.)

Is it not a more reasonable construction of this act that Congress did not intend to cover this subject or invade this field at all, and that states may still, under their police power, prevent the transmission of quotations into a state for use there in a bucket shop?

If that be so, then clearly this contract does not violate this anti-trust act; for it only, as respects states like Illinois and Missouri, requires the telegraph companies, in the distribution of the quotations, to obey the criminal laws of the state.

Hence Judge Hook was right in holding, as he did (Rec., 972), that the contract at bar does not violate this anti-trust act.

3. Nor does it violate the Missouri anti-trust act for the same reasons ,and for the further reason that this Missouri statute should be construed with this other Missouri statute, which prohibits the communication of quotations to bucket shops. These acts cannot both be given effect, if the anti-trust act be held to require the giving of quotations to bucket shops.

It is therefore respectfully submitted that the order of the Circuit Court of Appeals should be reversed, and the decree of the Circuit Court be affirmed.

HENRY S. ROBBINS,
Counsel for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Petitioner,

vs.

CHRISTIE GRAIN & STOCK COMPANY & C. C. CHRISTIE,
Respondents.

BRIEF OF RESPONDENTS OPPOSING PETITION FOR CERTIORARI.

This case throughout is an effort on the part of the Board of Trade to establish the principle that it may engage in the business of keeping a bucket shop, and may enjoy a monopoly in that behalf which the courts must encourage and protect. At first blush, at least, this is novel if not startling doctrine, and yet, upon final analysis of the petition for the writ, as well as the brief filed in support thereof, it will be seen that the counsel's position is finally resolved into this bald assertion. The decision of

the Circuit Court of Appeals proceeds upon a finding of fact, which is overwhelmingly sustained by the testimony. The law applicable to such fact is not new nor strange, and has been many times recognized by this Court. It is conclusively found, and cannot be gainsaid, that judged by ordinary standards and principles of universal application, the petitioner is a keeper of a place wherein is permitted and carried on the illegal business of gambling in grains and provisions, denounced by the laws of Illinois, the state of petitioner's creation, as well as by the laws of the State of Missouri, and practically every other State in the Union. If the Board of Trade is not above and beyond the law, and must be judged by the same rule that is supposed to mete out the deserts of the highest or the lowest, it is guilty and has no standing in a court of conscience to invoke protection, much less the fostering of this illegal element of its business. Counsel has not directed the Court's attention to any testimony which even he will claim is opposed to the finding of fact made by the Court of Appeals, and this for the all-sufficient reason that there is no evidence of that kind in the record. It is true that he makes an effort to minimize the effect of the evidence upon which the finding of the Court is based by stating that it is supported by the testimony of but eleven witnesses. This would seem to be a reasonably sufficient number, particularly where there is no countervailing proof. Counsel also omitted to state that among those eleven witnesses are some of the largest and most influential dealers and members of the Board of Trade, including its president. So, then, the Circuit Court of Appeals was well justified in the statement which it made, appearing in the opinion as follows:

"The testimony of the president of the Board of Trade, Mr. William S. Warren, and a large number of the members of the Board, was taken for the purpose of showing the character of the transactions had upon the floor of the Exchange Hall; and there is absolute unanimity in their evidence to the effect that much the larger

part of these transactions were deals wherein it was not expected or understood that there would be any delivery of the article nominally dealt in, but the same were carried through and settled by methods clearly devised to avoid the need of actual delivery."

At this point attention is called to the fact that there are two independent classes of business transacted upon the Board of Trade which have no relation to each other. These are (1), present sales for cash, and (2), dealing in futures. The continuous market quotations, which give rise to the present controversy, are derived from the latter class of business solely, as it is transacted in the pits. The cash business is not transacted in the pits. The quotations do not emanate therefrom, and such element of business is a thing apart from this controversy. It is the other class which the Circuit Court of Appeals, as well as the Circuit Courts of the Southern District of Ohio, and of Indiana, and Missouri, upon substantially the same testimony, have denounced as being vicious and illegal. As said by the Circuit Court of Appeals:

"The estimates of the witnesses vary as to the per cent of the transactions in which actual delivery was contemplated or had, running from one to fifteen per cent, thus proving that at least eighty-five per cent, and more probably ninety-five per cent, of the transactions, would come under the condemnation of the Illinois Statute."

There are a variety of schemes and devices under color of which this gambling is conducted upon the Board. Among those which may be mentioned are "stop orders," "hedges," "rings," "transfer trades," "spreads," "direct settlements" and "scalping." We will hereafter briefly describe these various devices as explained by the testimony in the record. Suffice to say here that they are all countenanced by the rules and course of business permitted by the Board, and are not only designed with a view of avoiding the actual transfer and delivery of the

commodity dealt in, but are directly repugnant to and inconsistent with the idea of transfer and delivery.

The learned counsel for the Board, however, has taken the bull by the horns and seeks to show, in a somewhat labored argument, that one of these species of transactions, "hedging," has been, after all, very much maligned, and is indeed a very laudable and praiseworthy practice. This is ingenious, if not ingenuous, because it above all others has been most frequently and uniformly denounced by both statutes and courts as the very capsheaf of gambling, as containing the very quintessence of all the devices framed by the ingenuity of man to turn the nimble dollar by betting upon the rise or fall of the market.

The argument of the learned counsel contains a very curious blending of effort to show that the courts and statutes have obtained an erroneous impression of this pastime called "hedging," with the further effort to demonstrate that if the courts and statutes are right, it is, after all, a very useful and praiseworthy species of gambling, and forms a very necessary adjunct to respectable and legitimate business, and therefore should be upheld, anything in the statutes to the contrary notwithstanding. In the brief consideration which we wish to give this particular transaction, it will be more helpful if we dissever the consideration of its essential nature from the consideration of its supposed public utility.

This term is so widely and popularly known that it defines itself. It is the most simple and undisguised method of gambling which exists. The counsel confines his illustration to a supposed use which might be made of it by one who has become the actual owner of cash wheat for export or milling purposes, and who desires to protect himself against a decline in the market, but it is obvious that it is equally available to one who has concluded that he has been betting upon the wrong side of the market and had better get to cover. But assuming it is employed by the owner of cash grain, what is the object of the hedge? Is it with a view of actually selling and de-

livering the commodity? Not at all. From the very nature of things, at the time this hedging contract is entered into by the owner of the grain, it could not have been his intention to deliver the grain so sold against the cash grain he purchased. The only time, as shown by the proof, when any delivery is ever made on these hedging transactions is where an abnormal market on the Board has been created by a clique of men trying to put the price up, another illegal act. The average price of the hedging sale on the average normal market is not, and necessarily cannot be, as good as the average export price of the same grain. In connection with the illustration given by the counsel in his brief, it was the testimony of Mr. Marcy that Armour & Co. hedged fifty million bushels of grain that year on the Chicago Board of Trade, of which they delivered on contracts but about nine million, and that the balance of the fifty million bushels was closed out and settled by differences through the Clearing House. It, of course, is a necessary truth that if the average price of the hedging sale was as good as the average export price to the handlers of grain at the time delivery could be made on the hedging sale, the grain would never get beyond Chicago, but would there be piled up in the elevators and would remain there. No man would bother with handling the cash property except for a profit. The owner of the grain in the elevator will cancel his hedged sale on the Board, sell his grain in the elevator for export, incur the trouble and expense of freight and insurance rates for the all-sufficient reason that he will thereby make a profit. This could not be if the export value of the grain, under normal conditions, were not always sufficiently above the value of the cash grain in the elevator for the current month (meaning the immediate month, the time at which delivery on future contracts can be effected), to show a profit to the owner above its value for its delivery on a Board of Trade contract. If the grain sold on the hedging contracts on the Board of Trade, under normal and usual conditions, as

they obtain from month to month and year to year, were sold at a price which averaged as high for the owner as could be obtained elsewhere at the time delivery on such hedging contracts could be made, it would necessarily follow that Armour & Company, or any other large grain handler, would not incur the trouble of taking the grain into the elevator, making freight contracts for export and handle this cash grain when all they would otherwise have to do would be to turn over their certificates of grain on these hedging sales and get their money. It is further demonstrated by the testimony in this case that even in the case of Armour & Co., cited by the counsel in his brief by way of illustration, they have no intention of delivering the actual grain on the Chicago Board of Trade at the time of making the hedging contract, and the only contingency on which a delivery will be made is the one cited, namely, where a corner is attempted to be created on the Board, raising the price to an abnormal figure. In the very instance given by the counsel where the delivery was made, it was the result of this attempted corner and of a purpose subsequently formed as a result of the attempted corner. During that time there was a very great and unusual amount of manipulation in the Chicago market, and the prices of corn, wheat and oats, one after another, were abnormally elevated, and it was in that situation and under those conditions that Armour & Co. did deliver twenty per cent of the grain they handled.

Take another illustration referred to by the counsel, namely, that of the miller who hedges his purchases upon the Board of Trade. The wheat which he has bought and is in his possession is put into the mill and is being ground into flour. Will the counsel explain how this miller's intention could have been to deliver the wheat when he was engaged from day to day and from hour to hour in grinding it into flour, changing its form and condition in such respect that it would be an impossibility to deliver on the hedged sale.

There are two classes of men under the testimony who deal legitimately in wheat who also use the hedge. They are the miller and the exporter. The exporter will buy, say 200,000 bushels of wheat from Armour & Co. which they have hedged. He loads it into the car and starts it for Liverpool. Armour & Co., having no further use for the hedge on the wheat, go into the pit and cancel their hedge contract, but the exporter has 200,000 bushels of wheat afloat, and is taking the risk of the market between the time it is loaded out of the elevator in Chicago until it goes into the elevator in Liverpool. In order to protect himself *he* very naturally goes into the pit and sells an equal amount of wheat, and he will keep this open in Chicago until his wheat arrives in Liverpool and he has sold it there, when he will cancel his hedge trade in Chicago. Can it be explained how this exporter could have been possessed of an intention to deliver the wheat when it had passed the gates of Chicago and was on the ocean destined to Liverpool?

These are but illustrations of the only purpose which could animate a *bona fide* dealer in wheat in hedging his business on the Board of Trade. They are drawn from actual experiences testified to in the record, and it must be clear that in the very nature of things they refute the presumption of a purpose of delivery—a purpose which would nullify the efforts to profit from the commercial transactions. As vindicating the truth of this contention it is the testimony without contradiction, that the instances of actual delivery are not over fifteen per cent in any case, some witnesses putting them as low as one per cent of the volume of the transactions; and even in those infrequent instances the delivery is occasioned by a peculiar and abnormal market. So even such delivery is the result of a purpose conceived *after* the inception of the trade on the Board. Therefore, whether it be done by an owner and dealer in the commodity, or by one who has merely been gambling upon the other side of the market, the sum and substance of this hedging transaction is a mere

gambling device to protect from loss, to preserve the balance of account.

Let us now briefly consider some of the other devices countenanced, if not conceived, by the Board of Trade, and upon which the continuous quotations are founded.

"Rings" is a plan to do away with deliveries and to cancel transactions between the members. It can be illustrated in this way: A has July wheat sold to B at a certain price; B to C at a certain lower price; C to D again at a higher price; D to E at a different price, and so on until it has reached Z, and Z has again sold it back to A. There is provided by each firm or broker in this speculative business, settling clerks. After the markets have closed in the pit these clerks meet and "ring out," or cancel entirely around the ring the transactions by the casting up of the account or difference and settling the account or difference between the various parties. For the purpose of carrying out and effectuating this plan the Board of Trade itself, through its directors, each day fixes an arbitrary settling price by which all deals that are settled or cancelled or rung shall be determined. This is a purely arbitrary price fixed by the Board for the purpose of aiding the brokers in arriving at the matter of settling differences. The testimony shows that very seldom, if ever, when delivery time arrives, does the broker have anything outstanding which has not been rung up and cancelled in the manner described. It is worthy of observation that, whereas each firm selling in the pits keeps a ring book showing the settlements, they do not keep a cash sale book at all for the good reason that they have no use for it, as they are not engaged in such a trifling business as selling for cash. In this connection attention is called to section 6, pages 43 and 44, of the rules of the Board of Trade, from which it will be seen that the Board recognizes and furthers these settlements and provides that where one trade can offset another, they shall be *deemed* settled and the balance between the market value of the property covered by the trade and the sev-

eral contract prices shall be struck and shall immediately become due and payable to the party entitled thereto. It is further provided that the Board shall fix a settling price and post it in the Exchange Hall and in the settlement room of the Board, a room separately set apart and devoted to this use. The members are expressly required by the rules to keep a settlement book and furnish employees called "settling clerks," and are required to make reports showing net balances due to and from each other, and they are required to accompany their reports with a check covering the balances against them on contracts settled.

By Section 8, pages 44 and 45, of the same rules, a Clearing House is established to which the members are required to report any offset of any outstanding trade for future delivery under pains and penalties for omission of duty in this behalf. In the report which each member must submit of each day's transactions, his purchases and his sales are set forth and the Clearing House offsets these various trades among the members against each other, figures and determines the balances and closes each day's transaction. This Clearing House is designed and fostered solely for the furtherance of the dealing in futures upon the Board. The Board does not maintain a Clearing House to clear checks in payment for actual grain bought and sold. There is no similar system to adjust matter of weights and grades and claims and disputes which naturally arise to a greater or less extent in all transactions in the buying and selling of actual grain. There are no absolute or special rules governing the delivery and the receipt of the actual grain from one house to another, but the entire mechanism of an elaborate and complex system of rules and of checks and balances is designed for the cancellation of contracts for future delivery and the paying of differences.

The Chicago Board of Trade Clearing House is the most remarkable and highly evolved commercial contract cancelling machine that was ever invented. Its function

being that every day and at one price, it cancels *all* the contracts that *all* the members were busy in making during the whole business hours of the Board the previous day. And it performs the marvelous service year in and year out, thus saving the members one-half the work that would have to be done were contracts settled in the usual methods of business away from this Board.

In the light of these rules and of this method of doing business, is it not absurd to say that the delivery of the grain is the rule, or that the delivery is contemplated and intended at the time the trades are made? Could any sane man say that this marvelously ingenious system was conceived for the purpose of furthering deliveries? Nothing could be farther from its object. It is at complete odds with the idea of delivery. It is built up and perpetuated upon the thought of forestalling and preventing delivery. This is its governing principle, and although no witness had testified upon the subject, any court and any man of ordinary intelligence must know that it is against the truth to contend that the element of contemplated delivery has any part or lot in the business of speculating in these futures on the Board of Trade.

Another system of similar import is known as the transfer system. This is practiced largely by brokers in the pit by which one buys from another a commodity for future delivery and afterwards one of them arranges with the other to transfer the account to somebody else. It is merely the opposite of the ringing system. In other words, instead of the ring, two brokers will settle by transferring directly from one to the other, and thus balancing their trades.

Spreads arise where the commodity is bought in one market and sold in another. For instance, a party may buy a quantity of July wheat in Kansas City and sell the same quantity for the same delivery in Chicago upon the theory that the usual relative conditions between the two markets for the same commodity may widen before the delivery time, thus yielding a profit and enabling him to

close the deal out by selling the same quantity in the one market and buying the same in the other. This is resorted to, as shown by the testimony, largely by speculators in the pit, and it certainly cannot be said that there is any evident intention to deliver on any such transactions, or ever could be. The deal is made in the first instance by the speculative broker with the expectation that the difference only is to be the profit, and that is all that he is dealing in or expecting to accomplish.

Another system practiced very largely among the members is known as direct settlements, and may be explained in the language of Mr. Warren, the President of the Board, page 824 of the record in the Court of Appeals, as follows:

"Well, if I had bought from you 5,000 bushels of wheat for May delivery and sold it to Mr. Robbins, and Mr. Robbins had in turn sold it to you, we make an offset of those trades and each one pays or receives, as the case may be, the difference, based on the settling price of the day."

Scalping is another large and extensive method of conducting this speculating business, and is explained by Mr. Crosby, one of the prominent members of the Board, page 730, as follows:

Scalping is applied primarily to the members of the Board who stand in the wheat pit, for instance, and trade for their own account on small profits and small losses on the fluctuations in the market. * * * It is applied primarily to those traders who stand in the pit and trade for an eighth or sixteenth profit or loss, making a rapid turn in the market.

Q. Close out a trade as soon as they can get a small profit? A. Yes, or a small loss; as quick in one way as in the other.

ARE THESE DEALS MADE WITH ANY REAL INTENTION TO DELIVER THE PROPERTY SOLD OR RECEIVE THE PROPERTY BOUGHT?

In a brief and general way we have described the nature of the transactions upon the Board of Trade, which result in the continuous quotations. It is hard to see how anything approaching the dignity of an argument can be advanced in support of the assertion that these are legitimate and not gambling transactions, as defined in the statutes of Illinois. It certainly borders upon the absurdity to say that the intention of delivery forms any element in such business. In our brief in the Court below we went into statistics and demonstrated that if this business had reference to wheat *in esse* it would require several hundred times the entire product of the United States, and would result in a hitherto undreamt of congestion in elevators and warehouses in Chicago, and the piling of many millions of bushels upon the ground besides. In this connection attention is called to the statement made by the President of the Board, as detailed by Mr. Christie with reference to a conversation he had with Mr. Warren, page 528, as follows:

They had been discussing the question of giving the Christie Grain & Stock Co. these quotations, and Mr. Christie then testified:

"It resulted in their refusing to give me the quotations unless I would agree that every order I got I would place on the Board of Trade. That I would not agree to. Mr. Warren, in the course of the conversation, said that 'it had gotten to this point, that the bucket shops had got to quit or the Board of Trade had got to quit.' I said, 'That is a remarkable statement; do you mean to say that if all the men who bet on these markets, outside of the Board of Trade, should quit, that there would not be any more market for grain in Chicago?' 'Oh, no,' he said, 'there would be a cash market for grain.' I said, 'Wouldn't that market be there forever?' He said, 'Yes, that would be true, but there would be sixty men upon this floor who could do all of that, and there were

two thousand members of this Board who were trying to make a living.'"

This testimony has not been denied and it presents a remarkable situation indeed. Two things are strikingly demonstrated from it; first, that the Board regards bucket shopping with extreme disfavor only so long as it does not take place within its own *purlieus;* and, second, the admission that sixty men out of the total membership of two thousand can do all the cash business transacted on the Exchange, and that the remainder must depend for their livelihood upon the gambling instinct of the country, who are willing to back their judgment on the rise or fall of the market.

In this connection we also invite the Court's attention to the very lucid statement and analysis by Judge Thompson in the case of Board of Trade vs. Odell Commission Company, 115 Federal, 574, of the nature of the business of dealing in futures as practiced upon the Board of Trade. It is founded upon the same evidence which appears in this case, duplicate copies of the testimony having been taken and used in each case by agreement.

After an exhaustive discussion of the evidence, Judge Thompson stated his conclusion on page 588 as follows:

"The Court finds therefore, upon the evidence submitted, that the greater part of the dealings in futures on complainant's exchange are bucket shop transactions, and that they are permitted by complainant in violation of the laws of Illinois. It is suggested, however, that the public good will be best served by suppressing the smaller bucket shops, even upon the application of the complainant; and reference is made to 2 Pom., Eq. Jur., Sec. 941, where it is said that, 'in compliance with the demand of a high public policy, equity may aid a party equally guilty with his opponent.' But the situation here does not call for the application of that doctrine. The bucket shops are the offspring of the Chicago Board of Trade and kindred organizations, to which they still look for sustenance and life, and they can only be effectually suppressed by striking at the root of the evil. When this

species of gambling on the commercial and stock exchanges of the country ceases, the bucket shops will disappear, and not before.

"Many applications have been made by the bucket shops to enjoin complainant from depriving them of its quotations, and such applications have uniformly been refused, upon the ground that courts of equity will not lend their aid to carry on an illegal business, nor will they lend their aid to the complainant to maintain a place where bucket shopping is permitted in violation of the laws of Illinois and Ohio."

See also the later decision by Judge Adams of the Eastern District of Missouri in Board of Trade of Chicago vs. Donovan Commission Co., 121 Fed., 1012, the syllabus of which is as follows:

"Where it was proved that over ninety per cent of the transactions executed in the pits of a Board of Trade were mere gambling transactions, which both parties intended to settle by a payment of differences in the subsequent price of the commodities dealt in before the maturity of the option, quotations so obtained were of no legitimate value as tending to promote the commerce of the country, and dissemination thereof could not be restrained by such Board of Trade."

And on page 1014 that learned jurist remarked:

"The fact just alluded to that deliveries are rarely, if ever, actually made in cases of sales in the 'pits' for future delivery, and the great weight of evidence bearing on the issue, leads me irresistibly to the conclusion that no deliveries in such cases are intended or contemplated by either party. It is a time-honored maxim of the law that every person must be held to have intended the reasonable and usual consequences of his acts. The property therefore which the complainant asks this court to protect by its injunctive process is the right to monopolize the speedy dissemination of information instructing the public what wagers are being made on the future price of grain and other commodities by the members of Chicago Board of Trade. Information of the prices made in other parts of the Exchange on grain and other provisions

for actual consumption or export, or even for the purposes of holding for speculative profit in cases where the grain or other provisions are delivered in fact, or are intended to be delivered, might, and undoubtedly would, be very valuable to the public, and such information would promote legitimate trade and commerce, but the other kind of information, conveying intelligence as to the wagers that are made in the 'pits,' in my opinion has no legitimate tendency to promote the commerce of the country, but on the contrary, tends only to excite the gambling propensities of the public. Such is not a species of property which appeals to a court of conscience for protection."

A similar view has been taken by Judge Anderson of Indiana. It is thus to be remarked that six of the ablest members of the Federal bench have unhesitatingly condemned this business of dealing in futures in the manner practiced upon the Board of Trade as being in violation of the statutes of the states.

Neither is the fact that in a trifling percentage of instances deliveries are made, sufficient to leaven this mass of iniquitous and reprehensible practices. Even as respects such small percentage of deliveries, we have seen that they are casual and resultant from a fortuitous combination of circumstances occurring after the deals, and are not the result of a preconceived and concurring motive when the transaction was entered into.

But it is the exception which proves the rule and not the rule which proves the exception. The transactions as a whole are to be characterized by the customary and usual methods and results, and not by the infrequent and casual departures from the custom. The Court of Appeals of Illinois most aptly and forcibly expressed this point in Christie vs. Board of Trade, 94 Illinois Appeals, 229-236, as follows:

"If it could be said that there appeared to have been a use, slight and comparatively insignificant in extent, for purposes other than gambling, still the conclusion would be unaffected, that the regular and substantial busi-

ness of appellant, for which the quotations were sought, was an illegal business. *In a court of equity the pretext could not be permitted to hide the substance.*"

OUGHT THIS GAMBLING BUSINESS TO BE ENCOURAGED AS AN ADJUNCT TO LEGITIMATE TRADE?

We have seen that there pervades the argument of the Counsel for the Board of Trade a suggestion of this character. While we might grant, for the purpose of the argument, that it is very convenient, and possibly necessary, that the dealer in grain should be permitted to offset or protect his legitimate business by hedging upon the Board of Trade, and while we might go further and admit that there is no useful public purpose conserved by any gambling acts, and that everything of such nature ought to be wide open and untrammeled from police interference, this, after all, is a question of policy with which the courts have no concern. The Legislature of the State of Illinois, as well as practically every other state in the Union, have taken a different view upon this subject from that advanced by the counsel, and have placed the ban of their disapproval upon this character of business. It yet remains for any court to question the wisdom, much less the right, of the State to thus forbid.

THE BOARD OF TRADE IS WITHIN THE CONDEMNATION OF THE STATUTE.

It seems to be the argument in the brief for the petitioner that the statute of Illinois is leveled only against traders and not against the keeper of the place. In this counsel are clearly wrong. In the elaborate opinion of the Supreme Court of Illinois, Soby vs. People, 134 Ill., 66, which is quoted at length by the Circuit Court of Appeals in the case at bar, this is demonstrated. It is shown that the prior statute of Illinois was deficient in not including within its condemnation the keeper of the place, and that

the present act was passed for the purpose of remedying this very defect. Says the court:

"A consideration of the act will, as before indicated, show that it is directed against the keeper of any office or place, etc., wherein is conducted or permitted the buying or selling of grain or other produce on margins or otherwise, without any intention of receiving the property bought or delivering it if sold. Under this clause of the first section the offense consists in keeping the place, etc., where such buying or selling is conducted or permitted."

Counsel next argues that there is some special divinity which hedges about the Board of Trade and takes it out of the purview of this statute. No language is pointed out in the statute which expressly or by any necessary implication would seem to exclude the Board of Trade, if guilty, and under familiar rules of interpretation, no reason suggests itself why the law should be applied in all its rigor in the one instance and withheld from all force in the other. To the ordinary mind there is no particular sanctity hovering over a Board of Trade which should render it above or beyond the law, or make it any less amenable to police control than the humblest citizen in the land. It is somewhat difficult in a dignified argument to fitly characterize this assumption on the part of the Board. The moral obliquity of vision of the controlling powers of this corporation is curiously illustrated by this position. We believe it is the prevailing sense of the members of that institution that the correct definition of a bucket shop transaction is one which occurs *off* a Board of Trade. The element of intention with respect to delivery never penetrates their minds as having anything to do with the case. And thus this pharisee, panoplied with an incorporation certificate to "inculcate principles of justice and morality," is setting forth upon its holy mission of preventing bucket shopping *off* the Board of Trade, and incidentally (although, of course, unintentionally,) wiping out competition in the special and pecu-

liar brand of gambling, of which its members, from long and accustomed usage, have become past masters. To an ordinary mind it would seem reasonably clear that the Board of Trade will either have to knock out the beam in its own eye and mends its way to conform to the law, or will have to procure an amendment to the law to conform to its peculiar and jaundiced vision. So long as it is proceeding in the very teeth of the statute it is in a poor position to invoke a Court of Equity for protection of its illegal business.

It is essential to here further state that this case presents no question that in any way prevents the Board of Trade from continuing to conduct its business just as it has always done. The only effect of the decision was to hold that the Board of Trade could have no standing in a Court of Equity to assert any right to these quotations after they were made and had been sent into the country, so long as such quotations arose from violation of law. It is also worthy of more than passing comment in the light of the protestations of the purpose of the Board of Trade in launching upon this litigation, that the Christie Grain & Stock Company is a legitimate dealer in grain and provisions, and it is not pretended by counsel for the Board that the Christie Company in any respect possesses the elements of a bucket shop, or that it tolerates any bucket shop transactions among those who deal with it. The only offense that respondent is shown by the evidence to have been guilty of is that it would not agree to send all its business to the Board of Trade. This above all things demonstrates the utter insincerity and lack of good faith in the contentions put forth by the Board of Trade and its counsel as the reason for this litigation. The true object, however, of this suit and of this campaign which is being conducted by the Board does not lie so far beneath the surface as to be beyond the ken of reasonable men. It rests in the simple fact that the Board is engaged in a gigantic effort to secure an absolute and unmolested monopoly of all of the grain busi-

ness in the country as well as a monopoly in the gambling upon the rise and fall of markets.

IT APPEARING THAT THE MARKET QUOTATIONS ARISE FROM ILLEGAL AND GAMBLING TRANSACTIONS ON THE BOARD, THE BOARD OF TRADE HAS NO STANDING IN A COURT OF EQUITY TO ENFORCE ANY RIGHTS WITH RESPECT TO SUCH QUOTATIONS.

A mere statement certainly is sufficient upon this point. The argument in the brief of the Board of Trade is entirely apart from the question here. The very subject matter of this controversy are these quotations. It was for the purpose of securing an asserted right to them that the bill was filed. Eliminate the question of the quotations from the case and all purpose of the suit is gone. Surely when a court of equity discovered that the very foundation of the plaintiff's case was built upon a studied and deliberate evasion and violation of the statute of its creation, it could do nothing less than turn the complainant out of court. But for this violation of law these quotations in this form and volume would not be created and in existence. It is indubitable that no court, either at law or equity, would countenance a suit to enforce the terms of one of these gambling transactions. By what reason, then, could the court vindicate any other claim growing out of the same transaction? It is unnecessary to cite authority upon a proposition so elementary and salutary as this.

IN CONCLUSION.

We respectfully suggest to the Court that there is no reason why a writ of *certiorari* should be issued in this case. In Clews vs. Jameson, 182 U. S., the Court did

grant the writ. In that case, however, there existed a controversy over the facts, and the Court of Appeals misapplied the law to the facts. During the course of the opinion in Clews vs. Jameson, this Court laid down a clear rule for guidance in the determination of this question. The case at bar turned upon a simple issue of fact, the proof of which was all one way and overwhelming. This being so, the Court could do nothing less under the decision of Clews vs. Jameson than enter the decree which it did.

This application is in effect one to this Court not to accomplish a reconsideration of the law in its relation to admitted facts, but to have this Court reconsider and review the weight of testimony, and to find the facts contrary to the Court below. That, as we understand, has never been held to be the office of the writ of *certiorari*, and no writ has ever been granted by this Court for such purpose.

JAS. H. HARKLESS,
CHARLES S. CRYSLER,
W. H. ROSSINGTON,
CHAS. BLOOD SMITH,
CLIFFORD HISTED,
Solicitors for Respondents.

IN THE

Supreme Court of the United States.

BOARD OF TRADE OF THE CITY OF CHICAGO, *Petitioner*,

vs.

CHRISTIE GRAIN & STOCK COMPANY ET AL., *Respondents.*

No. 224

May it Please the Court:

The purpose of the argument, now ventured upon, is to show, that the Chicago Board of Trade cannot have a property interest in quotations made by transactions in its grain and provision "pits," unless equity will protect by injunction quotations of prices made by the fluctuating operations of a "bucket shop," or those of a common gaming house.

The Chicago Board of Trade was chartered February 18, 1859, to maintain a commercial exchange, to

inculcate principles of justice and equity in trade, to acquire and disseminate valuable commercial and economic information, to secure its members the benefits of co-operation in the furtherance of their legitimate pursuits and to do and carry on any business usually conducted by boards of trade.

The business of the board is that of maintaining an exchange wherein is conducted the purchase and sale of grain and provisions for immediate delivery and dealing in the same commodities for future delivery. Transactions of the first mentioned class are designated "cash" transactions. Those for future delivery are called "options" or "futures." The "cash" transactions are conducted in one part of the exchange hall, set apart for that use; the "futures" are dealt in only in what the bill characterizes as "pits," which, whether bottomless or not, afford in the nature of the operations conducted in them, abundant reason for their characterization.

There is little dispute as to facts established by the evidence. The quotations in which the board claims property are made in the "pits" and are the continuous and fluctuating prices made from moment to moment, during the business hours of the exchange on each day on which the exchange is open for the creation of a future market. The quotations are gathered and turned over to a telegraph company, under contract with the board and are scattered broadcast over the country among brokers who conform to

the conditions of the contract between the board and the telegraph company. The transactions in the "pits" cover millions of bushels of grain each day and millions of pounds of "provisions." The astounding volume of this business, as going to its illegal quality, will be commented on as the argument proceeds. To enable the "traders" in the "pits" to successfully settle their trades, the board has established a "clearing-house" system, whose elastic advantages and frictionless operations will likewise be descanted upon as the argument proceeds. Those who "deal" in the "pits" and by their "dealing" make the continuous quotations, are enabled to make transactions which the choice vernacular of the "pit" designates as "spreads and straddles," "hedges," "ringings-out," "transfers of the option" and "scalps." The vast operations in the "pits" are limited, in greatest part, to transactions thus designated and as the argument proceeds, an attempt will be made to show their significance.

The quotations which the complainant seeks to protect, or in which it seeks to have a property right of exclusive use adjudged in itself, grow out of a business, or aggregation of acts, which relates to dealings in futures, in which not over two per cent in a volume of billions result in deliveries, but which are settled before the contract day of delivery by paying and receiving the difference between the contract price and the settling price as fixed on the day

of settlement; to dealings in commodities which, as represented by the volume of the transactions, in the year (sometimes in a few months), largely exceed the entire production of the year of such commodities in the United States; to dealings which involve merely gambling upon "hedges" against a possible decline in price, there being no intention to deliver the property dealt in, or to receive it if tendered under the trades; to dealings which involve merely gambling upon "spreads" and "straddles," which exclude all idea of bona fide transactions; to dealings qualified by "stop orders" and "transfers of trades," which are obnoxious to the moral sense; to "scalps," which are the last expedient of the reduced and threadbare habitue of the "pit," and to "rings" and the "clearing" house, without whose convenient, recordless details and ramifications, gamblers of the "pit" could not conduct their operations.

The statutes of Illinois, July 1, 1887, . . . Curtis Annotated Stat., page 165, make it unlawful for any corporation . . . or person to keep or cause to be kept within the state any bucket shop, office, store or other place, wherein is conducted or permitted the pretended buying or selling of . . . grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought or of the property so sold, or wherein is conducted or permitted the pretended buying or selling of such property on mar-

gins; or when the party buying any of such property or offering to buy the same does not intend actually to receive the same if purchased, or to deliver the same if sold, and the keeping of all such places is hereby prohibited.

A section of the statutes provides that it shall not be necessary in order to commit the offense defined in the first section, that both the buyer and the seller shall agree to do any of the acts therein prohibited, but the crime shall be complete against the corporation or person pretending or offering to sell, or pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation or person who shall communicate, receive, exhibit or display in any manner any such offer to so buy or sell, or any statements or quotations of the prices of such property, with a view to any such transaction, shall be deemed an accessory.

In the case of **Soby vs. The People**, 134 Ill., page 66, it appears that the plaintiff in error had an office in Jacksonville, Illinois, where he transacted a grain commission business as agent of Lindbloom & Co., members of the Chicago Board of Trade. He received daily quotations from Chicago and other markets on wheat, corn, oats and other commodities, which he displayed, as received, upon a blackboard for public inspection. He professed to buy and sell such products on the Chicago market, receiving from his customers an agreed margin per bushel on wheat and

corn. The object of his displaying quotations on the blackboard was to show his customers what the market was. He testified that he never asked the intention of customers, and that they could have grain delivered to them if they wished.

It appeared from the evidence that one Charles James bought 5,000 bushels of wheat and 5,000 bushels of corn and put up with the plaintiff in error 2 cents margin per bushel. He bought in October for May delivery and closed the deal in a few days at an advance on his margins. He stated that his intention was to make money out of the transaction by buying and selling on the fluctuations of the market. He neither got nor delivered any corn when he bought or sold.

The Supreme Court of Illinois, in passing upon the case, stated that it was clear from the evidence that the plaintiff in error occupied an office or place wherein was conducted or permitted the buying or selling of grain or other products on margins, without any intention of receiving and paying for the property so bought or of delivering the property so sold; and wherein was conducted or permitted the pretended buying or selling of such property on margins, and where the party buying such property or offering to buy the same did not intend actually to receive the same if purchased or of delivering the same if sold. It was held that the keeper of such a place could not shield himself from criminal respon-

sibility behind the fact that he made no inquiry of his customer. The statute was held to be preventive in its character and to be aimed at the keeping of places where gambling in grain is permitted. "The keeper must know that the transaction is gambling, or in good faith have just reason to believe that the buying or selling is not within the intended prohibition of the statute."

It was apparent to the court that the legislature for the purpose of carrying into effect their expressed intention of preventing the evils resulting from bucket shops and bucket shopping, and to suppress the vice of gambling in grain and other products so detrimental to the interests and welfare of the people, had determined to close, suppress and prohibit the keeping of places where the practice of bucket shopping or gambling in such commodities is permitted.

In a later case, that of **Weare Commission Co. vs. The People**, 209 Ills. 528, the object in presenting the case to the court, as stated by the counsel for the plaintiff in error, now the counsel for the Chicago Board of Trade, was to bring the construction of the act of 1887 again to the attention of the court, "in the hope that the decision in the Soby case may be more accurately confined to its facts and a further construction of the statute had, which, while not impairing at all its efficacy to accomplish the purposes sought in its enactment will not work . . . unjust consequences to legitimate traders."

The facts in the Weare Commission Co. case were that the plaintiff in error, which was a member of the Chicago Board of Trade, kept a branch in the city of Princeton, Illinois, where it was represented by an agent. When a customer wished to buy for future delivery he gave his order to the agent and deposited with him a margin of not less than two cents per bushel on grain to secure the plaintiff in error against loss by reason of the execution of the order. The agent would thereupon send an order by telegraph to the plaintiff in error at Chicago, and the plaintiff in error would buy on the Chicago Board of Trade the amount of grain so ordered to be bought by such customer. The purchase would always be made in the name of the plaintiff in error, in accordance with the rules and regulations of the board of trade, and the plaintiff in error would enter the transaction in the account kept by it with the customer.

The plaintiff in error was charged with keeping an office in Princeton wherein was permitted the pretended buying of grain without any intention of receiving and paying for it. The plaintiff in error, as in the case of Soby, was convicted in the circuit court, prosecuted a writ of error to the appellate court, where the judgment was affirmed; and, in confirming the judgment of both the lower courts, the supreme court took occasion to remark that the statute presumes, and the decision in the Soby case presumes, that where a man keeps a place where gambling in grain

is permitted, he must necessarily intend to permit it, otherwise he would not keep the place where it is carried on by other parties.

The court remarked that it was contended that the object of the act of 1887 was merely to suppress bucket shops and bucket shopping. But it was held in **Soby vs. The People** that the act was intended to go further, and to suppress all places wherein was conducted or permitted gambling in grain or produce in any form. It makes no difference whether the places or offices where such gambling is conducted are the offices of commission merchants or members of the board of trade of Chicago or not. The court approved the opinion of the appellate court in stating that it made no difference whether the real intention of the parties was formally expressed in words or not, if the facts and circumstances in proof showed that it was the real understanding that there should be no actual purchase and no delivery or acceptance of the property involved in the contract, but merely an adjustment of damages upon differences. The intention of all the parties was to be determined from all the circumstances; and, where transactions of a prohibited character were carried on in the office of a particular person and with his aid and concurrence, the presumption of his knowledge of what was going on was made by the law, without any requirement of proof on the part of the people or prosecution. The court, in the most emphatic and unqualified manner, re-

affirmed the doctrine of **Soby vs. The People**, thereby doubtless indicating to the counsel for the plaintiff in error that, confining the decision in the Soby case accurately to its facts, while it did not work unjust consequences to legitimate traders, yet did inferentially establish the fact that the Chicago Board of Trade to all intents and purposes conducts a bucket shop, or a place wherein bucket shopping, or what is commonly known as bucket shopping, is permitted, sanctioned and carried on. The transactions shown by the evidence in the two cases now on certiorari to have been had in the "pits" of the Chicago Board of Trade, conducted in the office of a broker, would necessarily evidence a violation of the statute, in that they would prove that a place was kept in which "bucket shopping" was permitted or carried on. No such divinity doth hedge the Chicago Board of Trade as to except it from the consequences of its own violation of the law.

In the main case, decided by the Court of Appeals for the Eighth Circuit, it was the unanimous conclusion of the court that there was absolute unanimity in the evidence of the president and a large number of the members of the board of trade to the effect that much the larger part of the transactions had on the floor of the exchange were such that it was not expected or understood in them that there would be any delivery of the article nominally dealt in, but that the same would be carried through and

settled by methods clearly devised to avoid the need of actual delivery. It was found that the admission of the witnesses varied as to the percentage of the transactions in which actual delivery was contemplated or had, running from 1 to 15 per cent., thus proving that at least 85 and more probably 95 per cent. of the transactions would come under the condemnation of the Illinois statute. The details of the testimony are found in the opinion of Judge Thompson in the case of the **Board of Trade vs. Odell Commission Co.**, 115 Fed. 574. In that case and in **Board vs. Donovan Commission Co.**, 121 Fed., upon consideration of substantially the same evidence, the conclusion was reached that over 90 per cent. of the transactions had on the floor of the exchange hall maintained by the Chicago Board of Trade were purely gambling transactions. The court of appeals concluded that the evidence clearly established the fact that the Chicago Board of Trade maintained and maintains in its exchange hall a place wherein transactions coming within the inhibition of the statute are permitted and carried on, and the preparation and sending out of the continuous quotations of prices based upon these forbidden transactions are intended to aid its members as well as outsiders in engaging in speculating and gambling on the rise and fall of the market, and therefore in both these particulars the board of trade violated and violates the plain provisions of the statute.

In the case against **Kinsey Co.**, 130 Fed. 507, in the Seventh Circuit, the master found as follows:

"The transactions conducted in the 'pits' of the complainant association, while they are of the same general character, are divisible into two classes, which are described by members of the board of trade as **hedging** transactions and **speculating** transactions, respectively. Of the members of the complainant association who are engaged in business in the exchange hall the number conducting speculative transactions is between one-third and one-half of the total, and practically all of such members conduct a **hedging** business.

"The principals who are engaged in hedging transactions are, generally speaking, either grain merchants, millers or manufacturers of grain products. The method of such principals is this: When they have bought grain in the country or in city warehouses which they propose to hold for future sales to domestic or foreign purchasers they at once sell in the pits of the complainant association an equal amount of grain; or, on the other hand, if they have sold to domestic or foreign purchasers grain or grain products, for future delivery, they at once buy in the pits of the complainant association an equal amount of grain for future delivery at times corresponding with the times of their selling contracts. And thus when they have contracts of purchase they have contracts of sale for future delivery in the pits practically even with

their purchases, and if they have contracts of sale with domestic or foreign purchasers, they have contracts of purchase for future delivery in the pits practically even with such contracts of sale. The object of such hedging is to insure against loss by fluctuation in the market in the commodity which the principal is carrying or which he has sold in advance of purchase and manufacture upon a time contract. A hedge must always be against a cash commodity.

"A speculative transaction is not based upon a cash commodity primarily. In effect it is based upon the confidence which on the one hand the seller of a commodity for future delivery has in his personal opinion that the price of the commodity sold will by the time of delivery have so declined that he can purchase the commodity for less than his selling price and thus make a profit, and while on the other hand, the buyer has his personal opinion that the price of the commodity bought will so advance by the time of delivery that the commodity bought will be worth more at the time of delivery than it was at the time of purchase and that he will thus have a profit. It is possible under the rules, usages and practice of the complainant association for the seller and the buyer, respectively, if either changes his opinion, to buy or sell in the "pits" the commodity which he has previously sold or bought, as the case may be, for the same time of delivery; while this procedure is in form the same as hedging; it is not designated

as "hedging," but is styled as "spreading." It is also possible under the rules, usages and practices of the complainant association for a member of the complainant association to make such counter contract of purchase or sale during the same day that he has under an original contract of sale or purchase, and thus within the day or within a few days to have his advantage of profit or to adjust his disadvantage of loss; such a course of business is designated "scalping."

"The evidence does not contain sufficient data upon which to predicate an estimate of the aggregate volume of business conducted in said pits daily, monthly or yearly; it does appear, however, that the volume of such business is enormous; one firm conducted transactions in wheat daily, aggregating 1,500,000 to 2,000,000 bushels, and in corn 1,000,000 bushels daily; another firm's transactions in wheat daily amounted to 6,000,000 bushels; a third firm's transactions in wheat daily amounted to 4,000,000 bushels; a fourth firm's transactions amounted to 1,000,000 bushels daily; a fifth firm's transactions in all grain amounted to 1,800,000 bushels daily, and a sixth firm's transactions in all grain amounted to 2,000,000 bushels daily. While it is true that the business of these six firms in the pits is much larger than the business of any other six firms conducting transactions in the pits, and that it would not be proper to say that the average business is a proper average of each of the

persons conducting transactions in the pits, it is nevertheless true that it is fairly deducible from the evidence that the aggregate business transactions in grain was largely in excess of the total wheat and corn production of the entire United States during either of the years 1900 and 1901, and was many times over the entire receipts in Chicago of grain during each of said two years of 1900 and 1901, and of such receipts in Chicago less than twenty per cent. inspected up to grades of grain which could be delivered upon time contracts made by said sales and purchases in the pits. **It is also true that a decrease in the total grain productions of the United States does not cause a proportionate decrease in the volume of business done in the 'pits' of the complainant association, but on the contrary such business is larger during a year in which there is a shortage in the grain crop.**

"Under the rules, usages and practice of the complainant association, all time contracts made in the 'pits' are carried until it is possible to close them as between members of the complainant association, by either of three methods of settlement, namely, the method called 'direct settlement,' the method called 'rings' or ringing out,' and the method of delivery by delivering warehouse receipts physically or 'by notice.'

"Most time contracts made in the 'pits' are adjusted as between members of the complainant association before the specified time of delivery arrives,

by either of the first or the second of the above named methods. Direct settlements are effected by offsetting similar contracts at the close of the business hours of each day in the following manner: As soon as is practicable after the close of business in the 'pits' each broker (individual, firm or corporation) conducting business in the 'pits' takes from the day's transactions on his books the contracts similar as to amount and time of delivery to counter contracts made with other members of the complainant association, and ascertains therefrom the difference of the aggregate prices of such similar contracts; and if the difference be in his favor, the amount of such difference is charged to the other party in such counter contracts, and if the difference is against him, such difference is credited to the other party to such counter contract. The following is a simple illustration: If during the day Broker A has sold to Broker B 5,000 bushels of December wheat at 75 cents per bushel, and Broker B has sold to Broker A 5,000 bushels of December wheat at 76 cents per bushel, after offsetting the contract at 75 cents per bushel, there is a difference in B's favor of one cent on each bushel, or $50. This offsetting difference in cash is placed as a debit or credit, as the case may be, upon the clearing house sheet (hereinafter described) of the respective brokers, parties to said counter or offsetting contracts.

"The 'ring' method of settlement is as follows:

Each broker (person, firm or corporation) conducting business in the 'pits' has an employe who is called a 'settlement clerk,' who keeps a record of all his employer's transactions in the 'pits;' the complainant association furnishes a room wherein all of such settlement clerks meet at stated hours each day and compare their respective books called 'settlement books,' which are required by the complainant association to be kept by each broker. Upon comparing their respective books, said settlement clerks ascertain what, if any, outstanding contracts may be offset by some other corresponding time contract made by the parties with other members of the association, and which of such contracts are, by consent of the parties thereto, permitted to be offset, and thereupon, under the rules of the complainant association, are deemed to have been settled, provided the requirements of sections 6, 7, 8 and 9 of rule 22 of the complainant association are met as therein provided with reference to the clearing house sheet and other details of settlement therein specified. . . . .

"Theoretically and in bare outline, an illustration of the 'ringing-out' method is as follows: Broker A sells to Broker B 5,000 bushels May wheat, Broker B sells to Broker C the same amount, Broker C sells to Broker D the same amount and Broker D sells to Broker A the same amount; by consent of Brokers A, B, C and D all of these time contracts are deemed discharged and by novation there is sub-

stituted a contract wherein Broker A, the initial seller in the series of discharged contracts, sells to Broker D, the last buyer in the series of discharged contracts. The clearing house sheets of the complainant association in evidence in this suit show that the actual process of 'ringing-out' time contracts by elimination and substitution is much more complicated than the outline illustration, but that illustration exhibits the principle of the process. Among the daily transactions in complainant's 'pits' there are 'hedging' contracts, 'spreads' and 'scalping' contracts; and all of these forms of time contracts are adjusted by both the 'direct' method and the 'ring' method of settlement. Upon the question that (what) part of the transactions in the pits are adjusted by the 'direct' method and the 'ring' method of settlement the evidence is not very satisfactory. It tends to show, however, and I accordingly so find, that at least three-fourths of the total transactions in the pits are adjusted by the 'direct' and the 'ring' method of settlement.

"In the event that said time contracts cannot be settled by either the 'direct' method or the 'ring' method, they are and must be closed by a third method, namely, delivery under the rules and usages of the complainant association.

"The rules of the complainant association do not permit any person other than members of said association to make 'time' contracts upon the floor of

the exchange hall and all 'time' contracts made in the pits are contracts between the members of the complainant association, who are in said transactions respectfully sellers and buyers. The rules of the complainant association permit members of said association as between themselves and non-members to act as brokers in 'time' contracts made in the pits. In case a member of the complainant association in making a 'time' contract in the pits acts as a broker for an undisclosed principal, if such contract is settled by either the 'direct' method or the 'ring' method, such settlement does not discharge it so far as such undisclosed principal is concerned, as between him and his broker, but the latter is required under complainant's rules to substitute a duplicate 'time' contract with the two elements of identity, namely, like amount of grain or other commodity and like date of delivery, but not like price. If such substituted contract is not a duplicate, but differs from the original in price, the broker becomes principal as to difference in the prices between the original and the substituted contract, and if it is impossible for such broker to substitute either a duplicate or a similar time contract, the broker becomes principal as to the entire time contract instead of the original principal with whom he, as broker, in behalf of his own undisclosed principal, entered into said original contract.

"The 'direct' method of settlement and the 'ring'

method of settlement is not only an advantage to the members of the complainant association in that it relieves them from the responsibility of carrying their contracts with other members of the complainant association, but they have added to this advantage the benefit of the margins deposited with them by the undisclosed principals for whom they act as brokers. . . . .

"The complainant association has prescribed no method or means which shall be employed by members of said association for the purpose of ascertaining the intent of their respective customers with respect to the delivery or non-delivery of the commodity covered by any time contract.

"Every member of the complainant association acting in the pits as a broker for a non-member customer requires from such customer a deposit as security in each transaction conducted by him, and this fact is within the knowledge of the directors and executive officers of the complainant association. The rules of the complainant association authorize the members of said association who act as brokers to charge broker's commissions in amounts fixed by such rules. One of such commission charges is expressed in part as follows:

" 'For the purchase or sale and for the purchase and sale of property for future delivery, whether the contract for purchase or for sale be first made as follows:

"Using a member of the complainant association as his broker, a non-member thereof may become a party to a time contract as buyer or seller and at any time before the date of required delivery he may become a party to another contract in which he takes the opposite side to that held by him in the first mentioned contract; such counter or reverse time contract may be authorized in the same order which authorizes the first contract by including in said order a so-called 'stop-loss' order; when such contracts are made they may be settled and are often so settled as between the member of the complainant association who acted as broker and his non-member customer by the payment of the difference between the contract prices. The fact that such is the custom is a fact well known to the directors and executive officers of the complainant association.

"The rules of the complainant association provide for settlements of time contracts made in the pits when the seller does not deliver the property on the last day of the month of the stipulated delivery—the rules and usages of the complainant association fix such last day of the month as final day of delivery—by allowing the purchasers the privilege of electing: First, to consider the contract forfeited; second, to purchase the property on the market for account of the seller at 1:15 o'clock of the next business day; or third, by requiring a settlement with the seller at

the average market price of the property sold on the last day of the month of delivery."

It will be observed, that these findings are by a master, as the best possible under the evidence, and they certainly do not place the transactions and methods in a light commendible in equity.

The complainant—a board of trade corporation chartered to inculcate principles of justice and equity in trade—seeks to restrain the defendants from using, without its consent, these "continuous quotations" of prices of commodities made every moment by members of the complainant in their mutual dealings for alleged legitimate purposes in the "pits" of the exchange maintained by the complainant. The bill contains much that is praiseworthy in tone, as far as the use of terms of protestation goes, but, after all, upon scrutiny, is found to resolve itself into a theory of enforcement of an exclusive right of property in an alleged commodity which the complainant has appropriated to itself through the creation of its members. The complainant claims exclusive ownership in continuous quotations of prices made by its members in their constant dealings in its "pits," which are "collected" for the complainant and sold to telegraph companies, which are privileged, in turn, to sell to all persons whose business is pronounced legitimate by the complainant. Precautionary measures of prohibitive character have been taken to prevent the illegitimate dealer in options from access to the quota-

tions made by the **legitimate** dealers therein, and the defendants are sought to be enjoined because, as it is averred, they are not among the privileged and the **legitimate**, but in some unconscionable manner obtain these fruits, which are not of the labor of the complainant and devote them to uses which, if prevented, will enhance the "business" in the "pits" of the board of trade and add shekels by way of commissions in greater abundance to the stores of its members dealing, as they do, in **"futures"** on commissions, **"scalps"** in their own interest, **"hedges"** *pro bono* everybody, **"straddles"** and **"spreads"** for the benefit of whom it may concern, and who **"ring up"** in the **"clearing house"** the ultimate settlement of trades based solely upon the difference in the "pit" between the prices of the seller and the buyer, neither of whom has the faintest intention to receive or deliver the commodity in which he has dealt. The manifesto of the bill is, however, lofty and bigh sounding in its phrases, and it only remains to be seen whether the results of the war quite come up to its magnificent proportions.

The important and serious question presented by the record is whether the complainant can be held to have property in the "continuous quotations" of prices made in the grain and provision "pits" of its Exchange.

With no facts affecting the transactions out of which they grow, if one concedes that their continuous quality is a necessary result of great commercial activity, or if one regards the Exchange, rather than

the members, and considers the prices in the "pit" as essential to the welfare of trade, it can well be assumed that the complainant should be held to have a "species of property" in the continuous quotations. Before considering, however, with what infirmities the quotations are attended as affording property in themselves by reason of the place and circumstances of their creation, one cannot escape the reflection, that perhaps, after all, there is something to be said with reference to their quality of mere continuousness. With all due deference to the learned adjudications which have invested such quotations with the dignity of a species of property, it seems to me that at the outset one cannot lose sight of the fact that they are not necessary or essential to commerce. They are made in dealings in "futures." They are not made in dealings in "cash" commodities. Just what quality, essential to the requirements of commerce, quotations of prices for delivery in the future can have, it is not easy to perceive. What the necessities of commerce and trade are which can legitimately require a quotation of prices for the future to be made every minute during the trading hours of the Exchange, is even less readily perceived. It is a matter of common knowledge that the "continuous quotations" do not fix the price of the day. They may show the fluctuations in the "pit," but they convey to no one a basis of price for the day. The complainant does not, and could not under its charter,

provide for the making of the quotations. It merely permits its members to make them. That the members are not by the processes of the dealings in "futures" gathering information for the benefit of trade and commerce goes without saying. Why a miller in Rochester on February 27, 1905, should be advised what Schwartz, Dupee & Co., in the "pit" of the complainant think the delivery price of wheat should be in Chicago on some day in July, 1905—there being no day indicated—is not apparent to even the careful observer. It is obvious that the whole scheme of dealing in "futures" has been devised for speculation rather than the gathering of information necessary to trade or commerce. The farmer need not know at what price pork will perhaps be delivered in Chicago in some month in the distant future. It cannot afford the merchant a guide to his operations to tell him that on February 28, 1905, a string of fluctuating quotations showed great activity in the "pit" in May corn, or July pork, or June wheat. So that it is legitimate comment upon the quotations as "continuous quotations" that they answer no purpose for the necessary information or guidance of trade. Dupee, or Counselman, or Warren, or Rice may shriek themselves hoarse in the "pit" in February over May corn, but just why the yells should afford a right of property in the product of the yelling is a problem of modern necessities of trade which equity cannot solve.

The scheme of speculation in futures bears no relationship to sales for the account. The suggestions afforded by its conduct are wholly those which result from mere gambling operations.

Again, that the dealings in the "pit," and the quotations resulting therefrom, have been productive of the most deplorable conditions of wrong-doing, actual crime, suffering, sorrow and want, is matter of common knowledge. The complainant affords the opportunity for all of this doing and undoing. "What," said Mr. Justice **Blanford** in **Cunningham vs. Bank,** 71 Ga. 400, "is the transaction termed 'futures?'" It is a speculation on chances. "A betting on a game of faro, brag or poker cannot be more hazardous, dangerous or uncertain. Indeed, it may be said that these animals are tame, feeble and submissive compared with this monster. The law has caged them and driven them to their dens. They have been outlawed, while this ferocious beast has been allowed to stalk about in open mid-day, with gilded signs and flaming advertisements, to lure its unhappy victim to its embrace of death and destruction. What are some of the consequences of these speculations in 'futures?' The faithful chroniclers of the day have informed us, as growing directly out of these nefarious practices, that there have been bankruptcies, defalcations of public officers, embezzlements, forgeries, larcenies and death. Certainly no one will contend for one moment that a transaction

fraught with such evil consequences is not immoral, illegal and contrary to public policy." The system which enables these results to follow is not one which the chancellor will commend. "Prices"—"continuous quotations"—which lead to such results, or render them possible, ought not to be possessed of the quality of property of any description. A complainant which knowingly permits such conditions to obtain and seeks a monopoly of the gruesome privilege should not be heard in equity.

Consider the place of their origin—the "pit," the wheat pit, the corn pit,, the provision pit. That these pits are not completely of the bottomless degree is not the fault of the complainant. The catch word of their very designation—the "pit"—is a concession by their makers that equity should regard them with abhorrence. Consider the terms applicable to the transactions out of which they grow—the "hedge," the "spread," the "straddle," the "scalp," the "ring"—terms as expressive of the gambler's vocabulary as is the choice vernacular of the race-track, the "pool-room" or the "faro bank." Consider the fact as shown by the whole volume of evidence before the court, that transactions in futures are the principal business of the Exchange, and that ninety-eight per cent. of them are settled before the day of delivery by the parties paying and receiving the difference between the contract prices and the "market" prices as shown by the quotations on the day of settlement.

Consider the details of transactions permitted by the complainant to be done in the "pits" and which lead to a great part of the continuous quotations—just how much no one being able to tell.

Take the delectable episode of the "hedge." It is pure and simple gambling. It is the gambler's resort by way of insurance against possible loss. Rice, a witness, says that it is known as a matter of fact, that one is not required to deliver anything on these hedging contracts unless he so desires. He is under no obligation to either deliver or receive, but may go on the Board of Trade—of course in the "pit"—close out the contract and receive or give the difference in price. This is the usual practice on the Board of Trade, has been for many years, and is generally recognized by all millers, speculators, and grain dealers of the country. Warren, the president of the complainant, concedes that eighty-five per cent. of these hedging trades are "rung up" —that is, settled upon the difference in the "market," but the evidence shows the proportion to be much greater. Now, can it be successfully contended that quotations which are based largely upon such transactions are a species of property, rights in which can be protected in equity? It will not do to say that some quotations may be afflicted with this infirmity, but they are not all so afflicted. Equity will not stop to winnow the grain of honest transactions from the chaff of immorality.

Again, take the "spread" or the "straddle." What's

in a name? That which we call the "spread" would be just as malodorous under any other name. The transaction to which these terms of endearment among speculators are applied consists in "buying" a commodity in one "market" and "selling" it in another. A speculator may buy "July wheat" in St. Louis and sell the same quantity for the same delivery in Chicago, on the assumption that the relative conditions between the two markets for the same article will widen before the time of delivery and thus give him a profit. When the "spread" comes he closes the "deal" by selling in St. Louis and buying in Chicago and thus takes his profit from the difference between the "spread" and the condition which existed at the time of buying. Of course, the "quotations" which result from operations of this sort are honest indications of the workings of a market to which the world looks for guidance! The Chancellor naturally will regard such quotations as evidential of the purpose of the complainant to "inculcate principles of justice and equity in trade!" It is conceded all around by the witnesses that a "spread" is mere gambling. There cannot be the faintest suggestion of a bona fide transaction in the affair. There can be no rights of property in trade quotations which merely evidence a "spread," and a court of equity will not lend its hand to protect the complainant in an effort to create a monopoly for the dissemination of such creations of nefarious practices.

Look at the feature of "scalps." The term is applicable to members of the Board who stand in the wheat pit, for instance, and trade for their own account on small profits, and small losses on the fluctuations in the "market." They trade for an eighth or sixteenth profit or loss and make rapid "turns" on the market. They are members of the Board. They, in many instances, do not have offices, but being members, visit the "pits" daily and engage in the "scalping" business. They may trade in thousands of bushels of grain, in a day, but while the trades are all for future delivery, they are all closed out before the quotation-making hours expire, and each scalper wraps the drapery of his couch about him, that night, with all trades closed and himself moderately exhilarated by his successes, or somewhat cast down by his defeats. How many scalps are made in the "pits" per day no one can tell, but they are almost innumerable. How many quotations originate from trades of this sort, no one can tell, but there must be hundreds each day, if not thousands. That the complainant seeks to maintain an exclusive ownership in this sort of property is doubtless prompted by its chartered, pre-rogative to "acquire and disseminate valuable commercial and economic information," but I take it that the quotations, *pro hac vice*, are to be looked upon only as the variations in the fluctuations of a gambling enterprise.

Consider **"stop orders,"** and **"transfer trades."** Just what proportion of quotations is made in this way cannot be indicated, but it must be very large. Now, a "stop order" cannot very well be said to result in a quotation which will evidence dealing in a commodity so as to make a price for the guidance, or information of merchants and legitimate traders. The witnesses explain that "stop orders" are sent to limit losses. Where deals are made on stop orders, they necessarily exclude the idea of a delivery. They are notice of an intention merely to gamble in the commodity. The broker who receives the "stop order" with the order for the trade knows from its receipt, that his customer is merely gambling in the commodity.

"Transfer trades" are stated by the witnesses to be very frequent in the "pits," and they state that these transfers may involve a great many parties and may finally wind up by transferring the deal from one straight across to the other, and that this occurs where "Rings" are not made. It does not happen in "ringing," because they do not like to break the "Rings," but if the Ring is not made up, they may settle by transferring directly from one to the other and thus settle the matter entirely between all parties concerned in the transaction. And they state that where a "Ring" does not go through, then they resort to the transfer system, and this is an-

other extensive means of "settling" contracts and putting them out of existence.

The cap sheaf in the complainant's methods is found in "ringing" the trades made in the "pits." That with the system of "ringing" future contracts maintained and the settling of differences through a "clearing house" provided for the purpose kept up, a complainant can be found to claim that quotations made in a business having such incidents are entitled to protection in equity, shows how great must be the hardening processes of the chilling winds of Chicago.

The ringing system was invented by the complainant to prevent deliveries. Its object was to do away with deliveries and cancel transactions between members. To enable this to be done, a "clearing house" is provided, through which differences are settled on the basis of a clearing house price fixed each day by the complainant. The great majority of trades are rung out The clearing house is provided to cancel all transactions that can be cancelled. The price of settlement is arbitrarily fixed each day. The entire system has no feature suggestive of anything else but the jugglery of an aggregation of gamblers.

With the system of ringing contracts and the clearing house system of settlements of differences, one may trade in the pits of the complainant all of his life and never be called on to receive or deliver one bushel of grain, provided he merely transfers his con-

tracts from one month to another as they approach the time of delivery. The tremendous proportions of this showing made against the complainant cannot be indicated by an abstract of the evidence or extended argument. It must be explored in all of its details to be completely appreciated.

The evidence upon a merely casual examination, discloses the proportions of the "business" which would be impossible without the ringing system and the clearing house. In the year 1900 clearings amounted to over $62,000,000, and balances paid on settlements to nearly $24,000,000. The evidence affords a basis of calculation from which the "business" done in the "pit" of the complainant for the year 1901 amounted to over 7,000,000,000 bushels of grain, or more than twice the entire crop of the United States for the year. It is monstrous to contemplate "quotations" of prices made in mere "futures" as worthy of any consideration in equity.

Now, all of these many devices and practices are known to the complainant. They have been adjudged to be "bucket shop" practices, but whether or not they come quite up to the technical standard of the "bucket shop" as denounced by statute, they are practices highly detrimental in character, contrary to public policy, and subversive of good morals.

The aid of equity is invoked as against alleged bucket shop proprietors, and the complainant seeks to put itself upon the plane of high public policy, where

equity sometimes aids a party who is equally guilty with his opponent. But, as has been adjudged by a learned justice, equity will here refuse a helping hand. The acts complained of find their source in the transactions tolerated and fostered by the complainant. To destroy the bucket shop, the visitation must be upon the gamblers of the board of trade; when that is had, and not before, will the use of trade quotations cease.

It will not do to say that the "continuous quotations" are **news**, and therefore that part which is good, serving a lawful purpose, has, inherent in itself, the foundation of a property right in the disseminator. The **news** is simply the publication of bets made upon the future. The **news** is simply the publication of the proceedings had in a place whose conduct is prohibited by law. The permission by the board of trade given to grain gamblers to operate in its pits constitutes "bucket shopping" as clearly as can be constituted by the comprehensive terms of the criminal statute and the sweeping adjudications upon the statute. It is idle to concede that gambling is had in the "pits," and then assert that because some trades are made, which are not gambling trades, the property right is to find its foundation in the fact that some good may be derived from the quotations as **news** for the guidance of honest and legitimate traders. The vice of the argument is that the "quotations" are not **news** in the true sense, and they are not

disseminated as news to benefit the commercial world, but as information for the guidance or stimulation of persons of all classes throughout the country who may feel disposed to gamble in the "pits" of the board through the agency of its members operating under its "rules." It is matter of common knowledge that the customers of the brokers, members of the board, who make their trades through such brokers have, as a rule, no relations elsewhere with the commercial world. They gamble in grain, take "flyers" in grain, speculate upon the mere "difference in the market," and find their guidance and stimulant in the continuous quotations. Furthermore, there is abundant legal ground for the contention that the record demonstrates that the "continuous quotations" are emanations from a common gaming house. This may seem a harsh characterization of the "pits" of the Chicago Board of Trade, but it is justified by the facts. That a house where persons are permitted habitually to assemble to bet and win or lose money, whether with each other, or with the owner, is, in the meaning of the law, a gaming house and therefore a common nuisance, is too well settled and plain for discussion. **Ballinger vs. Commonwealth**, 98 Ky. 574. That the keeping of places where persons are procured or permitted to assemble together for the purpose of betting and winning and losing money falls within both the letter and spirit of the criminal code admits of no controvery. **Swigart vs. People**, 154 Ill.

234. A scheme lawful in itself cannot be made a cover for one that is unlawful. **Fair Ass'n vs. Carmody,** 151 Mo. 566. **"If the house in question had been opened and used for a double purpose, viz., as an honest social club for those who do not desire to play, as well as for the purposes of gaming for those who did, it would not the less be a house opened and kept for the purpose of gaming." Jenks vs. Turpie,** 13 Q. B. Div. Law Rep. 505. Were "quotations" gathered in a gaming house, going to show that bets were made and upon what contingency, would the proprietor have a property right in such quotations? Betting upon race tracks, which are no more gaming houses than are the "pits" of the Chicago Board of Trade, has led to the dissemination of news of the prices, rates, fluctuations and conditions of such betting. The **news** relates also to the immediate present. Were the race track owner to collect the "quotations," would he have a property right in such "quotations?" Why not? They are **news.** They inform the horse breeder that the particular strain of blood coursing through some horse's veins may be depended upon as a feature of successful breeding. Blood will tell, it is said, and why not give the exclusive right to the disseminator of the welcome news that the blood of Lexington is as potent in his descendants as it was in the veins of the blue-blooded ancestor?

This **news** is thus capable of serving a useful pur-

pose. There may have been many people at the track who did not bet. Horse racing is not unlawful. Speculation in grain may not be unlawful. Some dealers in the pit may have contemplated actual deliveries.

The fact that some did not bet ought not to qualify the nature of the news of the result of the races and the conditions of the betting. Therefore, the proprietor of the race track should have a property right in the news capable of being gathered and disseminated from the track. The *reductio ad absurdum* is thus complete.

Equity does not concern itself with the general morals of a complainant. But it does refuse aid where the taint of immorality pervades a right claimed to be within its protection. Gambling in grain and provisions is not the less to be reprobated because the reports of its conditions may have some useful purpose.

A board of trade ought not to be afforded an exclusive right in quotations of prices not made by itself, but by its members, who make them, in the great multitude of instances, merely for gambling purposes. It is true that there is "some soul of goodness in things evil would we observingly distil it out," but equity ought not to aid where it can only stand aghast at the full measure of iniquity the con-

duct evidences of him who seeks its beneficent protection.

Chester A. Kin
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Christie Grain and Stock Company.

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IN THE SUPREME COURT OF THE UNITED STATES

APRIL TERM, 1905.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Petitioner,
vs.
CHRISTIE GRAIN & STOCK COMPANY, ET AL,
Respondents.

No. 224.

Certiorari of the United States Circuit Court of Appeals, Eighth Circuit.

BRIEF OF RESPONDENT.

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BRIEF OF RESPONDENT.

STATEMENT.

This case comes to this Court from the United States Court of Appeals for the Eighth Circuit, in obedience to a writ of certiorari issued by this court to said Circuit Court of Appeals, directing it to send up for review the record and proceedings in this case.

The action was a proceeding for injunction brought by the Board of Trade of the City of Chicago, against the Christie Grain

& Stock Company, in the United States Circuit Court, at Kansas City, Western Division of the Western District of Missouri. That Court rendered a decree upon the temporary hearing, and granted a temporary writ of injunction against the Christie Grain & Stock Company. From that decree the Grain Company appealed to the United States Circuit Court of Appeals, Eighth Circuit. That Court declined to hear the cause until a final decree should be rendered and the whole record brought to that court. The case was afterwards tried upon the evidence, which was in fact the same evidence submitted on the temporary hearing, and a final decree entered against the Grain Company, and a perpetual injunction ordered. An appeal was then taken from that final decree to the United States Circuit Court of Appeals, and the whole proceeding was then before the Court.

That Court, after a full argument of the case, reversed the decision of the lower court and ordered the bill of the Board of Trade to be dismissed on its merits. The Board of Trade then applied to this Court for a writ of certiorari, and the same was granted and the cause is now here for a full consideration, the title of the case in this Court now being the same as it was when the cause was originally instituted in the United States Circuit Court at Kansas City.

On behalf of the Respondent we have caused to be filed with the Clerk of this Court twenty-five copies of the briefs upon which the cause was heard by the United States Circuit Court of Appeals, and beg to submit this additional brief, which in no way, however, supersedes the original briefs, but is additional thereto only, and we shall refrain from discussing anew the same questions that we have discussed in original briefs, and confine ourselves to answering such points as are suggested by the petitioner's new brief, filed in this Court.

We are not advised whether the counsel for the Board of Trade, petitioner herein, has refiled his original briefs in this court, that were presented to the Court of Appeals, but he has presented a new brief which seems to discuss a great many of the questions discussed in the original briefs, and it is to this brief of petitioner filed in this Court that we desire to direct attention.

I

Counsel for petitioner, in the opening statement of his brief, says:

"The general question in this case is whether a commercial exchange like the Board of Trade may enjoin the theft of its market quotations, while permitting a limited distribution thereof."

This statement is remarkable and unique in view of the record. We had supposed that the questions involved in this case, might be properly stated to be, as follows:

1st. Can the Board of Trade, confessed under its own showing to be engaged in conducting the "bucket shop" business, and gambling in violation of the laws of the State of Illinois where it is located, and contrary to the laws of the State of Missouri in which it seeks its equitable relief, be permitted to enjoy a monopoly in the gambling business?

2d. Whatever its business may be styled, or found in fact to be, the next question that arises is whether it can be permitted to enter into the two contracts with the telegraph company in violation of the Sherman act, to monopolize the trade or commerce among the several states and to restrain trade and commerce.

3d. And another question is whether its course of conduct with reference to the quotations in question, even though they are not made in violation of law, and even though it is not in an unlawful combination with the telegraph companies in restraint of trade, has been of such character as to impress them with a quasi public character to such an extent that it cannot seek to deprive the public of them, as decided by the Supreme Court of its own state, in the case 127 Ill., 153: *N. Y. & Chicago Grain & Stock Exchange* v. *Board of Trade of Chicago.*

4th. We also suppose that another important question in this case would probably be the one upon which the United States Circuit Court of Appeals decided this case against the Board of Trade, to-wit: That it comes into a Court of equity with unclean hands, with reference to the particular quotations it seeks to enjoin respondent from using.

5th. And another question as to whether waiving all of the questions heretofore suggested, the Board of Trade can have or does have a property interest in the quotations in question.

These questions we have suggested, are thoroughly covered in our briefs in the Circuit Court of Appeals, and filed herewith, and it is not now our purpose, by this additional brief, to again re-discuss those questions. And we respectfully invite the Court's attention to the consideration of those briefs prior to any examination of this one.

It will be noticed that counsel for petitioner, on page 2 of his brief, undertakes to inform the Court as to what a "bucket shop" is, when he says:

"A 'bucket shop' is a place where its proprietor posts upon a blackboard market quotations of one or more of the leading commercial exchanges, and stands ready to accept from all comers, bets upon the course of such blackboard prices, each trade being opened at the last quotation then on the blackboard and being closed at the last quotation on the blackboard at the time of closing. A margin is exacted from each customer, and when this is exhausted, according to the blackboard price, the so-called trade is at an end. The keeper takes out of each trade an arbitrary profit, miscalled a commission, which enables him to practically assume the risks incident to the fluctuations of the market, such risk being present for him only to the extent that the so-called purchases of his customers exceeded in the aggregate the so-called sales, or *vice versa*."

It is somewhat remarkable that counsel for the plaintiff should attempt to state that this is the definition of "bucket shop." It is probably such a definition of a bucket shop, as the Board of Trade would seek to have established, for the self-sufficient reason that it is the only definition that will prevent the Board of Trade from being a "bucket shop." The counsel's definition of a "bucket shop" might be interesting, but his difficulty is found in the fact that the statutes of his own state, Illinois, and the statutes of Missouri, have settled the question of what "bucket shops" are. The statute of Illinois provides (see page 27 of our original brief):

"That a 'bucket shop' is a place where there is permitted the

buying or selling of shares of stock, bonds, cotton, grain or other produce, *without any intention of receiving and paying for the property so purchased, or of delivering the property so sold, or the pretended buying or selling where the party does not intend to actually receive the same if purchased or to deliver the same if sold, and the keeping of all such places is hereby prohibited.*"

The statutes of Missouri, upon the subject, pages 28 and 29 of our original brief, are precisely the same. So a "bucket shop" as defined by the statutes is not what counsel for petitioner has stated, but what the statutes of the state define it to be. That is to say, all places which are kept, where is permitted the buying or selling of the character of property aforesaid, without intention on the part of the seller to deliver, or on the part of the purchaser to receive, are defined to be "bucket shops" no matter where they are kept, under what name or who keeps them, whether they be corporations, individuals or firms, or whether they style themselves Boards of Trade of Chicago, New York, or by any other virtuous name. We call attention to this for the reason that counsel for petitioner is attempting to frame a definition of his own, for "bucket shops," so as to let out the big "bucket shop" that he represents.

Petitioner has urgently tried under all occasions and every time that this question has been presented to the courts, to manufacture a self-serving definition for a "bucket shop," and has studiously avoided any statements that would lead the Court to even suspect that its own state of Illinois had defined what a "bucket shop" is.

DEFENDANT NOT A BUCKET SHOP.

It may be well here again to state as we have heretofore made plain in our original brief that the Christie Grain & Stock Company is not a "bucket shop," but is a legitimate grain company engaged in legitimate business, and no contention is made in this case that it is or ever was in the bucket shop business.

II.

Under point I of argument in petitioner's brief, he undertakes to argue the question, that even if it be conceded that the petitioner was engaged in the general gambling business, yet this fact would

not avail as a defense, for the reason that equity is not concern with the enforcement of criminal laws, and cites authorities upon this proposition.

But that question is not presented in this case. This is a case wherein the petitioner comes into the Courts of Missouri to enjoin a grain company from using market quotations which are made and produced as a direct result of practices and acts, which are declared to be criminal by the statutes of the state where it produces them, towit: the state of Illinois; and by the statutes of the state where it seeks equity, to-wit: The state of Missouri.

The case does not present the question of the court's attempting to enforce the criminal laws of the State of Illinois. Of course, this could not be done. In other words the courts of Missouri or the United States Courts sitting in the State of Missouri could not try anybody within that jurisdiction for violation of the criminal statutes of Illinois, and this is not a case wherein is presented the question of enforcement of any of the criminal laws of the State of Illinois or elsewhere. It is the negative proposition which says to a party seeking equity, that it must come into court with clean hands, and if the relief which it seeks involves an attempt to preserve to itself certain privileges as against the public elsewhere, and that privilege or right which it seeks to enforce, is itself the direct result of violation of criminal law and iniquitous and criminal in itself, the courts will leave it where it finds it.

We truly concede that equity is not concerned with the general morals of the complainant; but we likewise earnestly assert that equity is concerned with the specific morals of complainant where the particular protection or pretended right sought to be enforced grows out of, is bred from, and is a direct result of the violation of law on complainant's part. And the answer in this case states (pages 25 and 26 of our original brief) that the quotations:

"Which the petitioner seeks to enjoin the grain company from using are quotations which are the result of transactions in the Exchange Hall kept by the complainants, which transactions at said place kept and permitted to be kept by complainants are themselves transactions resulting in the quotations which defendants are

charged with using and which are themselves 'bucket shop' transactions and the result of 'bucket shop' transactions carried on and encouraged and fostered by complainant in violation of the laws of the State of Illinois and of the State of Missouri," etc.

And the evidence in the case, without dispute is, that the quotations in question are the result of deals made and permitted to be made in the Exchange Hall of the complainant with its knowledge and consent, wherein the parties pretending to sell the commodity or pretending to buy the commodity sold, *do not intend* that the same shall ever be delivered upon the sales or received upon the purchases, but settled upon differences before time of delivery arrives.

It is contended by petitioner that it does not violate the "bucket shop" statute of Illinois, because forsooth it is a Commercial Exchange, or Board of Trade, or some other kind of holy institution possessing the characteristics of some imagined immunity, and it undertakes to say that because the Board of Trade was organized in 1859, before the crime of "bucket shopping" was known, and before the legislatures of the various states had undertaken to stop the gambling business, as conducted by boards of trade and others, that therefore the statute ought not to have any application to it, and that inasmuch as its articles of incorporation provided that it might carry on such business as is usually carried on and managed by Boards of Trade or Chambers of Commerce, that therefore when the "bucket shop" statutes were passed, it could not apply to them.

This argument, of course, is based upon the implied admission that the petitioner as a Board of Trade or Chamber of Commerce, was carrying on the gambling business and producing the quotations as a result thereof, and doing a kind of business prohibited by the gambling statutes; but seeking to cover behind the proposition that it ought not to apply to them because they had been gambling before the statute relating to "bucket shopping" was passed.

This argument hardly arises to the dignity of candid thought. It would be a strange construction of the acts of the Legislature to say that because a company had been incorporated, and had stated

in its charter that it expected to carry on legitimate business "and disseminate principles of equity" that it was intended that it might thereafter engage in "bucket shopping" and gambling; and that if the Legislature afterwards attempted to prohibit it, the corporation could plead as a defense that it had been incorporated by the same legislature. If such was the case, then a corporation could engage in violation of the criminal laws of the country, and when confronted with the offense, could answer that it had been incorporated under the laws of the state before the statute was passed.

Or to further illustrate, a corporation might be organized for the purpose of engaging in the business of buying and selling personal property, and then when an act of the Legislature was afterwards passed prohibiting the stealing of horses, it could answer when charged with the offense, that it had a right to steal them, because it had a prior charter permitting it to engage in the handling of personal property.

Counsel in his brief undertakes to advise this Court of the grounds upon which Judge Thompson in the 115 Federal, 574, and Judge Adams in the 121 Federal, 1022, as well as Judge Anderson placed their decisions, in condemning the business of the petitioner and turning it out of court, but a reading of the opinions will give us a fairer view of it, than the excerpts quoted therefrom by counsel.

Counsel further argues in his brief, as he has repeatedly argued, in all this class of cases, that these commercial quotations have a great value for future trade, and cites an article from the Century Magazine, September, 1903, in support of that argument.

In answer to this, we are free to say, that we agree with the counsel for petitioner upon this subject. We agree with him that these quotations made by the Chicago Board of Trade for more than forty years, have been sent out to the public to such an extent, that they have become the guide, as to fluctuations in the market, and that they subserve a valuable purpose; and we might further concede that it is possible even, that "bucket shops" should be permitted throughout the country, and that it might probably be advisable to permit the Board of Trade of Chicago to continue

to violate the statute of the State of Illinois and other states in the making of its quotations as the result of gambling transactions, and it may be possible that these quotations, although the result of gambling transactions, on the floor of this exchange, have been so long continued, and trade conditions have so adjusted themselves with reference to them, that it would be unfortunate that they should be discontinued, and yet this question is wholly beside the case. As long as the policy of the Legislature of the state has been to condemn "bucket shopping" and the keeping of places where "bucket shopping" is permitted, it is not for the courts to say aught. The courts are not concerned with the character of crimes that the Legislature sees fit to create, as long as they fall within the dominion of legislative regulation. The Courts do not make the statutes of any of the states, and however beneficial these quotations may be, yet if they are made as a result of gambling transactions prohibited by the laws of the country, equity will not aid any gambler, or class of gamblers, whether doing business under the name of Boards of Trade or otherwise, to monopolize the iniquitous business. But it is to be further observed that neither the decision of the United States Circuit Court of Appeals, from which this case comes, nor the decision of the various Circuit Courts to the same effect, in any way cut off the right of the Board of Trade to continue its gambling business, nor interfere with the free, untrammeled and unfettered privilege of making the quotations.

We are not asking in this case to enforce the penalty of any laws of the State of Illinois or elsewhere against the petitioner, or seeking to curtail its illegal business, but are rather insisting that others have the right to use these quotations as well as the petitioner itself.

III.

Under point II of the brief of petitioner, it is urged that most of the Trades, whose prices the quotations record, are not gambling transactions. This point we do not desire to travel over again, as we have thoroughly gone over it in our original brief filed in this cause, and have quoted the testimony, citing the pages of the record, which is so conclusive that further argument is unnecessary.

This testimony referred to is testimony of the Board of Trade members themselves, including its president, Mr. Warren. This branch of the subject is covered in our original brief, being found on pages 105 to 158 inclusive.

Counsel for petitioner again urges in his brief here, that what he calls "hedging" transactions, ought to be upheld; but we say, with reference to this class of business, what more particularly appears in the argument upon the subject in our original brief, that they furnish a class of the most clean cut, unvarnished, gambling, of all the transactions on the Board of Trade. His argument that these trades are necessary in order to protect men who actually buy grain, may be all very true, and as we have heretofore said with reference to all this gambling business on the Board of Trade, it may have been continued for such a length of time, and trade has so adjusted itself to it, that it might be better if the "bucket shop" laws of the country were repealed, and these grains buyers permitted to hedge their deals, but the question is not to be solved by the proposition that they may subserve a useful purpose, nor by the fact, if it be a fact, that the country would be better off with this system than without it. That question would be a timely one to argue to the Legislatures of the States, and if it ever comes before the Legislatures for discussion, the dissertation of counsel for petitioner upon that subject may be of value. The Board of Trade of Chicago made a desperate and insistent effort before the legislature of the State of Illinois at its session just closed, to have all "bucket shop" laws of the state repealed, and it may be that it was right in this position, but the law stands; and the courts cannot give it relief by overturning the legislative will.

But in reference to these hedging deals we need suggest nothing further for the reason that counsel for the Board of Trade admits himself that they are gambling transactions where he says on page 27 of his brief:

"It is true that in much of the hedging by millers, and *all of* it done by exporters and packers, there is not, as in the hedging by grain buyers, an intention to deliver, but such hedging is in the nature of insurance against price fluctuation."

And again on the same page he says:

"But not so in the case of the exporter or miller when the former ships a cargo of wheat at San Francisco or New Orleans consigned to Liverpool, and contemporaneously sells on petitioners exchange a like quantity of wheat for future delivery. *He does not contemplate that this cargo will be available for delivery upon his future contract.* Nor can he thus profit by a change in the price of wheat. What he makes upon his future sale he loses upon his cargo and *vice versa.* His hedging is incidental to his export transaction."

So it is the position of the counsel for the Board of Trade here, that while this class of business engaged in by the Board of Trade and from which alone the quotations result, may be in violation of law that they are beneficial to the dealer, and this may be true, but a party who should engage in a plain game of American poker for the purpose of protecting himself in case his real estate should go down in the market, would be none the less gambling.

The question as to whether the purpose of the party may be innocent or not, or as to whether his gambling deal on the Board of Trade protects him against loss in some legitimate transaction, is of no concern. The bucket shop law does not deal with the question upon the theory that bucket shopping depends upon whether a party makes money out of it, or loses money by it. The party who "keeps the place" where transactions of this character are permitted, without any intention on the part of the parties selling to deliver the stock sold or of the party purchasing to receive the property, is engaged in "bucket shopping," and the argument of the counsel for the petitioner is simply an argument which would be properly addressed to a legislative body against enacting or longer containing "bucket shop" legislation.

In this connection, another fact that must be clearly understood at all times is this, that the quotations made on the Board of Trade of Chicago, and which are sent out throughout the country, as market quotations, are simply those quotations resulting from these speculative deals, where neither party to the contract intends or contemplates the delivery of the commodity, and in which trans-

actions they settle the differences between each other at the close of business every day.

No cash transaction of any kind on the Board of Trade makes any quotations whatever. In other words, there are no quotations made or sent out by the Board of Trade as a part of these market quotations, that emanate from any actual transaction in grain, stocks or other commodity, but the quotations which the petitioner seeks to enjoin are wholly and alone quotations made as a result of these speculative deals from day to day, hour to hour, and moment to moment, in which neither party to the trade intends or contemplates that delivery is to take place, but on the other hand positively understands and knows that no deliveries are contemplated or to take place. And we make this statement here to the end that there may be no misunderstanding as to what these market quotations emanate from.

As a further evidence of this fact, if there was any doubt about it, the rules and regulations of the Board itself prohibit any of its members from sending out any quotations on any *actual transaction*, and the rule of the Board of Trade introduced in evidence in this case, and known as section 22, page 17 of the rules, in force June 19, 1901, filed as an exhibit and introduced in evidence reads as follows:

"No member shall quote by public or private wire, or otherwise, any price except such as is the first for the commodity immediately following the time indicated on the tape or such as is thus posted on such blackboard. *No member shall be permitted to use prices made in any actual transaction*, as quotations."

So it will be seen that not only does the evidence show that these speculative gambling transactions alone produce these market quotations which the petitioner seeks to protect, but their rules positively prohibit any member from giving out any quotations on any *actual transaction*. On page 26 of the counsel's brief he says:

"In short this hedging has become an essential facility in the present day method of handling the products of the farm between the producer and the consumer," etc., etc.

Here again counsel is arguing as to why this kind of gambling ought not to have been under the ban of bucket shop condemnation, and we quite agree with him that it would be better, perhaps, if all the bucket shop laws of the country were repealed, but he can hardly expect this court to legislate for the country upon this subject.

And again on page 40 of petitioner's brief, he says:

"No thoughtful person, however, considers the commercial exchange as either entirely free from evil or wholly devoid of good. Its opponents concede that it aids legitimate commerce. Its friends admit that it facilitates illegal and harmful speculation. The former think that the evil preponderates over the good and that gambling is the essence, and help to commerce the incident. Its advocates on the contrary, think that the aid it renders to commerce outweighs the evil of the speculation it gives rise to. They thus differ only as to their conception of the ratio of the benefit and injury."

But it is of little interest to discuss this question as to what its friends or opponents think, because the Legislature of the State of Illinois has said *what all of its friends or enemies must think*. The legislature has done the *thinking for them on this subject*. This kind of an argument would be of interest if the counsel was a lobbyist before his state Legislature, but he is, unfortunately for his position, not before that tribunal. Hence it is apparent that the petitioner confesses that the quotations are made as a result of transactions that are in violation of law, and thus lamenting that the Legislature has prohibited their business, and is asking this Court to do that which the Legislature has failed to do for it, to-wit: to repeal the law.

IV.

Under point III of the argument in petitioner's brief, it suggests that the petitioner ought not to be held responsible for such gambling as is done and permitted on the Board of Trade, or to be deprived of the right to sue to protect its property right in its quotations. This, again, is assuming a position which is wholly unsustained by this record. The evidence clearly sustains the proposition

that practically all of the business of the complainant resulting in these quotations is that class of business known as "bucket shopping," resulting from the pretended sales or pretended purchases, wherein neither the parties selling nor the parties purchasing, contemplated or expected that any deliveries were to be made, but on the contrary, that the whole thing should be washed out by a system of cancellation of trades, through a cleverly concocted device called its "clearing house," which we have carefully examined into in our original brief. And again we invite the Court's attention to the evidence we have collected upon this subject, from pages 105 to 158 inclusive, of our original brief.

It may be here interesting to recall the fact that "bucket shopping" in this country, that is to say that cleverly devised system of speculation which deals in millions and millions of bushels of grain, and millions and millions of dollars of stock each day, and cancels the whole of it at night, by settling the differences based upon the rise and fall of the markets during the day, without delivery, or contemplating the delivery of even the proverbial "thirty cents," was invented alone, and emanated entirely from the Boards of Trade of the country, and particularly from this Board of Trade of the City of Chicago. "Bucket shopping" never was heard of, or known until this gigantic institution invented the scheme; and after they had invented it, other "bucket shops" throughout the country sprung up, and when the children of this parent became so prominent in "bucket shopping" elsewhere, as to interfere with the exclusive privilege of the father then it commenced a well devised scheme of throttling its progeny, and parading its virtue as a great exchange or Board of Trade, and sought to have it believed that it was a holy institution, and had the exclusive sacred right to a monopoly in the "bucket shop" business, and started throughout the country a number of suits of this character, charging other grain institutions with "bucket shopping" and contending that they could not use these quotations for gambling purposes; except, however, with one prominent reservation, never to be overlooked, and which is proven conclusively by the testimony, that "bucket shopping" elsewhere than on the Board of Trade was obnoxious only when such other alleged "bucket shop" failed to send all its deals to the members of this gigantic "bucket shop" at Chicago.

We here affirm that the reading of this testimony demonstrates the coolest and most deliberate scheme and device of the Board of Trade by these persistent injunction suits to force all "bucket shopping" of the country into the Board of Trade of Chicago. He who "bucket shops" through the members of the Board of Trade is not "bucket shopping" at all, as they are pleased to view it, and indeed the president of the Board of Trade, Mr. Warren, upon the stand, has sworn, that no matter what the trade or transaction was, however vicious or openly in violation of the laws, it would be virtuous if it was transacted through the portals of the Exchange Hall of the petitioner.

Counsel for petitioner seems to be afflicted with a severe lament that if the Board of Trade was not permitted to have a monopoly in its gambling business and a monopoly in controlling the quotations as a result of that thereof, that their business would be injured, and that contracts for the future delivery of grain could not be made, and that at all time trading would be prohibited.

This anticipation, however, of petitioner, is again wholly outside the question here. There is no law, decision, or rule of court, or ever will be that prevents a party from making a contract for the future delivery of grain, cotton, or bonds, or from making any contract in which time becomes an essence, and trading for future delivery is in no way prohibited, or prevented by any "bucket shop" laws of any State in the Union. It is that practice which consists in making deals for future delivery without any *intention* of ever carrying them out, or ever in fact *intending a delivery,* but intending settling the difference only in the market price before the time of delivery arrives, that is condemned by bucket shop statutes. It is not the contract for future delivery, or the making of any such contracts that are in any way prohibited or curtailed, but it is the making of such contracts, where the parties at the time of making them, both understood and contemplated that there is to be no delivery at any time, that the "bucket shop" statutes have declared shall not be allowed or permitted. Parties may freely make contracts to deliver grain, stock, or provisions at any future date when made in good faith, and when the time arrives for delivery, if delivery is not made, they must settle the differences, because such

would be the measures of damages in any event; but if they make a contract for future delivery, and intend at the time they make it, to settle it before the day of delivery arrives, and with the understanding that it shall be settled and cancelled and the difference adjusted by a mere balancing of accounts between themselves, then they are brought within the "bucket shop" statutes. It is the keeping of this kind of a place that the statutes of Illinois and Missouri prohibited, and the evidence shows that the petitioner "keeps the place."

But it is somewhat remarkable that counsel for petitioner should be pleading for this right and arguing that the Board of Trade should be permitted to engage in this kind of business, and that it subserves a useful purpose, and then in the next breath argue that that which he seeks to sustain does not in fact exist.

V.

Counsel for petitioner, under point IV of his brief, argues that the petitioner has property rights in these quotations, and urges upon the Court the terms of the contract between the Board of Trade and the telegraph companies.

We will not in this brief undertake to again argue the invalidity and viciousness of the contracts between the Board of Trade and the telegraph companies, as that has been thoroughly argued in our original brief, and neither will we here undertake to discuss the question that these market quotations, if legal, as petitioner claims they are, are impressed with a *quasi* public right, as decided by the Supreme Court of the State from which they emanate, to-wit, 127 Ill., 153, *Stock Exchange* vs. *The Board of Trade*.

Under point V of the petitioner's brief, he undertakes to answer the argument we have heretofore made in our original brief, that the contract between the telegraph companies and the Board of Trade is in violation of the Sherman Act and the Missouri Anti-Trust statutes, but it can subserve no useful purpose for us to again re-argue that question in this brief, and we refer the Court again to our original brief on this subject, pages 62 to 92 inclusive.

In conclusion, and knowing that the briefs we have heretofore filed are sufficiently lengthy, without adding to this one, we urge that the decision of the Circuit Court of Appeals was correct, and sustained by the undisputed testimony, that the petitioner was in Court, with unclean hands, and had no standing in a court of equity; but we further urge that there were other questions presented to that court which were not decided by it, for the reason that it became unnecessary to do so, in the view taken.

If it shall become necessary for this court to go further into the question than that court went, then there are three other important controlling propositions that must be overcome, before the petitioner would be entitled to relief.

1st. The proposition that in its contracts with the telegraph companies, it is directly engaged in violating the Sherman Act and the Anti-Trust law of Missouri.

2d. That if it be held that it is not coming into Court without unclean hands, and that its quotations are not made in violation of law, then, the petitioner having permitted the public to use its quotations for forty years, and for such time that they have become impressed with a public right, and impressed with the attributes of public property as decided by the Supreme Court of the State of Illinois, it cannot now at this late date, seek to throttle the business of others, built up in reliance on the public quality of the quotations, and cannot now gather in, and monopolize the trade of the United States in its own exchange hall; and

3d. Over and above all of this, the proposition that the complainant, whatever may be its relation to the quotations, have no property right therein that can be asserted against the public.

Respectfully submitted,

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Attorneys for Christie Grain & Stock Company, Respondent.

Kansas City, Mo., April 4, 1905.

FILE COPY.

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JAMES H. McKENNEY,
Clerk.

No. 224.

UNITED STATES CIRCUIT COURT OF APPEALS.

EIGHTH CIRCUIT.

1806

CHRISTIE GRAIN & STOCK COMPANY, ET. AL.,
APPELLANTS,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO,
APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MISSOURI,
AT KANSAS CITY.

BRIEF OF PLAINTIFF IN ERROR.

JAMES H. HARKLESS, JOHN O'GRADY
AND CHARLES S. CRYSLER,
Attorneys for Appellants.

FILED
OCT 21 1902
JOHN [illegible] DAN,

UNITED STATES CIRCUIT COURT OF APPEALS.

EIGHTH CIRCUIT.

CHRISTIE GRAIN & STOCK COMPANY, ET. AL.,
APPELLANTS,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO,
APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MISSOURI,
AT KANSAS CITY.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This cause comes to this Court by appeal from the decision of the Circuit Court of the United States for the Western District of Missouri, sitting at Kansas City, Judge W. C. Hook, holding the Court and rendering the opinion, which opinion is found on page 956 of the Record and reported in 116 Fed., page 944.

The application for the temporary writ on behalf of the Board of Trade was sustained, from which order the Christie Grain & Stock Company and C. C. Christie, appeal to this Court. The Western Union Telegraph Company, the Postal Telegraph Company and the Gold and Stock Telegraph Company were originally made parties defendant to the bill, but the first-named two com-

panies simply enter appearance and took no further part in the controversy. The Gold and Stock Telegraph Company made no appearance. The real and only issue being between the Board of Trade of the City of Chicago as complainants, and the Christie Grain & Stock Company and C. C. Christie, prime defendants and appellants here. The order of the Court sustaining the temporary writ of injunction, is found commencing on page 93 of the Record, and is as follows:

ORDER AND JUDGMENT.

This cause coming on for hearing upon the motion of complainants for a preliminary injunction, it was agreed in open Court that any order should be entered as of July 7th, 1902, the date when the decision was announced, and after reading the bill, affidavits and evidence filed herein, and hearing the argument of counsel, for the respective parties, and being fully advised in the premises,

It is ordered that upon complainant's filing its bond in the usual form, and in the penal sum of five thousand dollars ($5000.00) and with a surety to be approved by the clerk of this Court, a temporary injunction issue herein, restraining, until the further order of the Court, the defendant, Christie Grain & Stock Company and C. C. Christie, and each of them, either acting in his or its own behalf or as a member of any firm, or as agent or officer of any other person, firm or corporation, and also each and every of the agents, employes and servants of said defendants, from receiving or acquiring, directly or indirectly, the continuous quotations of the Chicago Board of Trade, (by which is meant all quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes) or any of them, until they or he, or the person, firm or corporation for which they or any of them shall be acting as agent, officer or employe, shall have first acquired the right to receive the said quotations by contract or purchase from complainant, or such telegraph company as shall lawfully have acquired from the complainant the right to sell and dis-

tribute its said market quotations; and also from directly or indirectly using, giving away, posting, selling or distributing said continuous quotations, and from aiding, abetting or assisting any other person, firm or corporation in receiving, selling or distributing the said continuous quotations, until the right to do so shall have been lawfully acquired by said defendants or other persons, as aforesaid.

Said Christie Grain & Stock Company and C. C. Christie pray for an appeal to the United States Circuit Court of Appeals, for the Eighth Judicial Circuit, which appeal is hereby granted.

The Court having heretofore announced to said defendants its decision, the terms upon which the supersedeas bond should supersede the injunctive portion of this order, and the date when the order should be made in time for and for the purpose of permitting them to immediately perfect their appeal and docket the cause in the Appellate Court, it is further ordered: The supersedeas bond for such appeal is hereby fixed at $3,000.00 and it shall suspend the injunctive portion of the order pending the appeal upon the following conditions only, however, (which are continuing conditions precedent to such suspension), i. e., said defendants shall immediately perfect their appeal and file their transcript in said Court of Appeals on or before the 11th day of August, 1902, and that the appeal be heard at the earliest time at which said Court will hear the same.

August 5, 1902.

(Signed) WILLIAM C. HOOK,
Judge.

BILL OF COMPLAINT.

The bill of complaint is found commencing on page 3 and ending on page 22 of the Record. This bill set up and charged that the Board of Trade of the City of Chicago were residents of the City of Chicago and State of Illinois, and bring their action against the Christie Grain and Stock Company, a corporation under the laws of the State

of Missouri, having its place of residence at Kansas City, and C. C. Christie, a citizen of Missouri, and a resident of Kansas City, the Western Union Telegraph Company, the Postal Telegraph Company and the Gold and Stock Telegraph Company, corporations organized under the laws of the State of New York; that the Board of Trade of the City of Chicago was a private corporation organized under a special charter granted to it by the State of Illinois on the 18th of February, 1859, that the objects of its incorporation was "to maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and disseminate valuable commercial and economic information and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits;" and was given authority to make rules and regulations for the government of its affairs, and to admit and expel persons in membership in such manner as its by-laws should require, and to carry on any business usually conducted by boards of trade or chambers of commerce; and that it was not authorized by its charter to conduct a telegraph business, and that its charter did not impose upon it the duty of imposing on the public or any person whatever, the knowledge of quotations of the prices made in transactions between its members within its exchange hall. It then alleged that the Western Union and Postal Telegraph Companies, engaged in a general telegraph business throughout the United States, and that the Gold and Stock Telegraph Company was a subsidiary company of the Western Union Telegraph Company; that C. C. Christie was the president and manager of the Christie Grain & Stock Company; and "that the said Christie Grain & Stock Company is engaged in the business of conducting a 'bucket shop,' or other place wherein is conducted, or permitted the pretended buying or selling of the shares of stock or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought or delivering the property so sold, and wherein is conducted or permitted the pretended buying or selling of such property on margins and wherein the party buying

or selling any such property, or offering to buy or sell the same, does not actually intend to receive the same if purchased or delivering the same if sold. And wherein is conducted the business of making or offering to make contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of any grain, provisions, cotton, stocks, bonds or other securities wherein both parties thereto or the said Christie Grain and Stock Company, contemplate or intend that such contracts, agreements, trades or transactions shall be or may be, closed, adjusted or settled according or with reference to the public market quotations of prices made on any board of trade or exchange upon which the commodities or securities referred to in said contracts, agreements, trades or transactions are dealt in and without a bona fide transaction on such board of trade or exchange, and wherein both parties or said Christie Grain and Stock Company contemplate or intend that such contracts, agreements, trades or transactions shall be or may be deemed closed or terminated, when the market quotations of prices made on such board of trade or exchange for the articles or securities named in such contracts, agreements, trades or transactions, shall reach a certain figure."

That the complainant had provided an exchange building in Chicago at upwards of a cost of $1,000,000.00, the maintaining of which, together with its exchange hall, cost more than $240,000.00 per year, $100,000.00 of which was raised by assessments on its members and that the price of membership in its exchange was worth $2,300.00, and that any person of good character and business integrity could become a member by paying an initiation fee or in lieu thereof acquiring a membership from some other member, which is purchasable in the market. That the exchange hall was provided for the exclusive use of the members of the exchange, which met on every business day from 9:30 A. M., to 1:50 P. M., every business day except Saturday, when it meets from 9:30 until noon, in which the members buy and sell for themselves, or as brokers for their customers, for present and future delivery, all kinds of grain, the value of said transactions aggregating many bushels of grain and many millions of pounds of hog products annually, and that the exchange had become one of the greatest grain

and provision markets of the United States; that the purchases and sales are made by open *viva voce* bidding and that the knowledge of the prices thus made on said transactions upon the exchange had become a species of property of large value, and the telegraph companies were willing to pay the complainant large sums of money for the privilege of receiving instantaneously said quotations and selling same to their customers, and that many persons in the United States engaged in the grain business are willing to pay, and for many years have paid, the telegraph companies large sums of money therefor. That the complainant realizes from the sale of its quotations in the City of Chicago, alone, more than $10,000.00 per year, and that the quotations are such a peculiar kind of property that their value to the complainant depended upon its retaining the power to confine the transmission and distribution of said quotations to telegraph companies and distributing companies as may contract with them therefor, and that the value of the quotations would be much impaired, if not wholly lost, if persons were allowed to receive or take them without right, surreptitiously or by theft, and use the same in distributing them to the public for use, their value depending upon the complainant preventing the quotations from being generally used or surreptitiously published in a way to make them free to the public, and that if any telegraph company or other person was permitted to promptly acquire said quotations, surreptitiously or by theft, and without paying for the same, the telegraph companies contracting with the complainant for said quotations, and agreeing to pay therefor, would be put to such a disadvantage in competition with such telegraph companies or persons acquiring the same surreptitiously and without paying the complainant, as to prevent the contracting telegraph companies from long continuing to purchase the quotations."

The bill then proceeds to charge that these quotations are collected and distributed by experienced persons placed in the exchange hall, where the buying and selling of the commodities are taking place, usually known as "pits," who take down quotations and immediately transmit them to telegraph operators on the exchange floor, who, in turn, transmit them by electric transmitters over telegraph wires, which are connected with the transmitter in the ex-

change hall, and thence to the various offices and places of business of persons in the City of Chicago, who desire to and are willing to pay the telegraph company for the same. Wires in the exchange hall being connected by what is called "tickers" and the quotations are thus sent out instantaneously and retransmitted by the telegraph companies by telegraph instruments called "Morse instruments." Which quotations are instantaneous, continuous quotations, and thus in turn convey to persons all over the United States and in the cities and towns thereof, within twenty seconds after the prices are made on the exchange hall, and that the yearly expense of this service is $7,000.00 to the complainant.

The bill then states that for two years prior to June 1st, 1892, that complainant was distributing and allowing to be distributed such quotations to any person whatsoever, but that after that date they desired for a time to give the public the benefit of the quotations by written licenses and permitted the Western Union and Postal Companies to gather the quotations themselves on the exchange floor and to sell and distribute them to the customers of the telegraph companies, without paying the complainant anything; but that the telegraph companies distributed the quotations to persons who used them for illegal purposes, which persons used them in gambling and betting on the fluctuations of prices on the exchange, and in "bucket shopping," contrary to the laws of the State of Missouri and of Illinois, which brought the good name of complainant into disrepute, and hurt its business, and that thereafter, they adopted rules and regulations to prevent the distribution by telegraph companies to "bucket shop" dealers, and to that end formulated regulations in the nature of a written contract to be signed by the telegraph companies, by which the companies were to agree not to give or sell the quotations to "bucket shops" or to any other telegraph company, and to pay the complainant for the quotations; but that the Western Union and Postal Telegraph Companies declined to sign the agreement, and that the complainant informed them that if they did not sign it before August 1st, 1900 (eight years after they had been thus sent out), that they would not be allowed the quotations, and the telegraph companies refusing to sign the agreement and not getting the quotations,

notified their customers that they would not furnish by wire the continuous quotations after August 1st, 1900. That from August 1st, 1900, to April 1st, 1901, the telegraph companies were not entitled to send out or distribute the quotations. That on April 1st, 1901, the Western Union Telegraph Company and the Postal Telegraph Company made and entered into an agreement with the complainant Board of Trade of the City of Chicago, which agreement is as follows, to-wit:

This Agreement, made this 15th day of April, 1901, between the Board of Trade of the City of Chicago, a corporation organized under the laws of the State of Illinois, party of the first part, and the Western Union Telegraph Company, a corporation organized under the laws of the State of New York, party of the second part, and the Postal Telegraph-Cable Company, a corporation organized under the laws of the State of New York, party of the third part.

Witnesseth: First. The said Board of Trade agrees to furnish, without discrimination or delay, to the said party of the second part, and said party of the third part, complete and continuous quotations of prices made in transactions between members of said Board of Trade in its exchange hall. Such quotations shall be received by each of said telegraph companies at its office or offices in the City of Chicago, over a wire or wires to be furnished by the said telegraph company, connecting its office or offices with Morse telegraph wire or wires in the exchange building of the said party of the first part, which shall run to and be connected with the Morse telegraph transmitting instrument upon the floor of said exchange; such transmitting instrument to be the only instrument by which such quotations are to be transmitted from the said exchange hall. Said market quotations shall be collected in the different parts of said exchange hall, and be brought to the Morse telegraph operator at said transmitting instrument with as much speed, efficiency and completeness as they were prior to June 22, 1900, collected by the said parties of the second and third parts and shall be transmitted by said operator with the same diligence, promptness and completeness as the same were prior to June 22, 1900, transmitted by the said parties of the second and third parts; the operator, Morse telegraph transmitting instrument and wires

leading to the various telegraph companies, parties hereto, to be located at the wheat pit, and within reach of the wheat reporter, said operator to be satisfactory to the telegraph companies. The said party of the first part agrees to employ or cause to be employed, without expense to the party of the second or of the third part, a sufficient number of competent persons for the purpose of collecting and transmitting the said quotations of sales upon said exchange hall, including the necessary force of messengers for carrying said quotations and reports to the transmitting operator, so that the parties of the second and third part shall obtain complete and continuous quotations throughout all sessions of said Board of Trade, of the prices at which commodities dealt in on said exchange are bought and sold. The party of the first part agrees that the intention of this clause is to insure that the delivery of its quotations to the parties of the second and third parts hereto shall be simultaneous with and in the same manner as their delivery to any other telegraph company or parties to whom they may be furnished for distribution. And said Board of Trade further agrees that said telegraph companies may designate some person of good character and proper behavior to take from the blackboard in said exchange hall, as the same is posted there, all market and statistical information which is posted on said blackboard, and that such person shall have a permit to enter said exchange hall for that purpose.

Second. The said parties of the second and third parts agree that they will not knowingly furnish or sell, directly or indirectly, said continuous quotations to any person, firm or corporation conducting a bucket shop or other similar place, where such quotations are used as a basis for bets or other illegal contracts based upon the fluctuations of the prices of commodities dealt in on said Board of Trade; nor will they knowingly continue to furnish said continuous quotations to any person, firm or corporation, who shall retransmit or furnish the same to any person, firm or corporation conducting such bucket shop or other place; provided, however, that nothing in this contract shall be construed as imposing upon the said parties of the second and third parts the duty to investi-

gate and determine the character of business conducted by any person, firm or corporation, applying for or receiving such continuous quotations, but the procedure to be adopted for the purpose of determining whether any applicant for such continuous quotations, or any person, firm or corporation receiving said quotations, contemplates using them, or is using them for any of the prohibited purposes aforesaid, shall be as follows:

1. Every applicant for such continuous quotations shall sign in duplicate an application in writing as follows:

"To the ..... Telegraph Company:

We hereby apply to you for the continuous market quotations of the Chicago Board of Trade, and we represent and agree with you and with the Board of Trade of the City of Chicago, from which you, under contract, have acquired the right to distribute said quotations:

1. That our business is and shall be the business of .... and that we are not keeping or causing to be kept, and will not keep or cause to be kept, any bucket shop or any office, store or other place wherein is conducted or permitted the business of making or offering to make, contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of any grain, provisions or other commodity or property, wherein both parties thereto or the undersigned contemplate or intend that such contracts, agreements, trades or transactions shall be, or may be closed, adjusted or settled according or with reference to the public market quotations of prices made on any board of trade or exchange upon which the commodities or securities referred to in said contracts, agreements, trades or transactions are dealt in, and without a bona fide transaction on such board of trade or exchange, or wherein both parties or the undersigned shall contemplate or intend that such contracts, agreements, trades or transactions shall be or may be deemed closed or terminated when the public market quotations of prices made on such board of trade or exchange for the articles or securities named in said contracts, agreements, trades or transactions shall reach a certain figure; and we agree that we will not use or allow anyone else to use such

quotations or any of them for any such purpose or in such bucket shop.

II. We further agree with you, and with the said Board of Trade of the City of Chicago, that said quotations are to only be received by us for our private and individual use, and that said quotations will be used only in our said business; and that we will not sell or communicate or otherwise give said continuous quotations to any news distributing company, or telegraph company, or other person or corporation, nor allow any person or corporation whatsoever to take, directly or indirectly, said continuous quotations from said office, or to make a wire connection with the instruments or wires in said office, over which we receive said quotations. But nothing herein shall preclude us from transmitting said quotations to any branch office of ours, nor to any of our correspondents, provided that before transmitting said continuous quotations to any such correspondent we first obtain in duplicate (one of which shall be at once delivered to said Board of Trade), an agreement signed by such correspondent in which said correspondent shall agree with you, and with said Board of Trade, to abide by and comply with Clauses I, II and III hereof. If the undersigned shall transmit, or permit to be transmitted said quotations to any person, firm or corporation, who shall not have first signed a correspondent's agreement as above provided, the undersigned hereby agrees that said Board of Trade may sue the person, firm or corporation, to whom said quotations are thus transmitted, to prevent the receipt or use of said quotations by said person, firm or corporation, without making the undersigned a defendant thereor to; provided the undersigned does not, in case of a partnership, all the members thereof do not, reside within the jurisdiction of the court in which said suit is brought. By "continuous quotations" in this clause II is meant quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes.

III. We further agree that a strict compliance with the above provisions is and shall be a condition precedent to our right to a continuance of said quotations; and agree if we shall violate either of the above provisions, then you shall have the right at once and without notice, to cut off and cease furnishing said quotations.

We further agree with you that you shall not be pecuniarily liable for the accuracy of the quotations which you may furnish under this application, nor for errors, delays or omissions in the service.

This application shall become a contract binding upon us when accepted by you."

One of such applications, so signed, shall be by the telegraph company mentioned therein at once transmitted to the party of the first part at Chicago, which shall thereupon instigate such investigation as it deems proper to determine whether such applicant desires said quotations for said prohibited purposes. Such investigation shall in the case of applications made and delivered to the party of the first part, within thirty days after the date hereof, be completed within sixty days after the date hereof; and when so received after said thirty days, said investigation shall be completed within ten days after the such receipt of said application. If said above party of the first part shall not within the time specified notify said telegraph company at its office in Chicago that, for the reasons aforesaid, said application should not be granted, then said application shall be accepted and said telegraph company may thereupon furnish said applicant said quotations; but if within said time said party of the first part shall find upon investigation and shall notify said telegraph company that said applicant wishes said quotations for any of said prohibited purposes, said telegraph company shall refuse to furnish said quotations upon said application. If legal proceedings shall thereupon or thereafter be commenced against said telegraph company on account of any delay in receiving said quotations, or such refusal to furnish quotations, said proceedings shall be defended by the party of the first part, which shall, and hereby agrees to pay all counsel and attorney's fees, costs,

charges, damages, fines, penalties and expenses which said telegraph company may be put to or may be made subject to on account of such delay or refusal; and for the purpose of securing the said telegraph company against any such loss, expenses or damages occasioned by such delay or refusal or such legal proceedings, the said telegraph companies shall at all times retain from the compensation hereafter provided the amount of such compensation for the period of six months; and to this end, the first payment provided for under this contract shall not be made until seven months after it shall go into effect, and if at any time either of the said telegraph companies shall be obliged to pay any costs, damages or expenses which shall not be refunded to it by said party of the first part on demand, then the said telegraph companies may pay from the said fund so retained the amount so paid by said telegraph company, and may then retain from the subsequently accruing instalments a sum sufficient to make good the amount so paid out from said fund for costs, damages or expenses.

2. If said Board of Trade shall at any time ascertain that any person, firm or corporation receiving said continuous quotations from the party of the second or third part, or from persons to whom either party of the second or third part furnishes said quotations, is using said quotations for the purpose of conducting the business of illegal gambling in any of the commodities dealt in on said board of trade, or is conducting a bucket shop as defined by the law of Illinois, or is violating any of the agreements contained in said application or correspondent's agreement than said Board of Trade may (1) so inform said telegraph company so furnishing said quotations and tender to said telegraph company its bond, with a surety company, in good financial standing, as surety thereon, running to said telegraph company, and in such penal sum as shall be fixed by said telegraph company, conditioned to save said telegraph company harmless from all costs and damages, including attorney's fees, that may be incurred by said telegraph company by acting upon said information and thereon withholding said quotations from such person, firm or corporation. And thereupon said telegraph company shall at once cease to furnish said quotations to such person, firm or corporation, or if a cor-

respondent, then to the person, firm or corporation whose correspondent he is; and in that event said Board of Trade shall, at its own expense, defend any suits brought against said telegraph company, by reason of its said conduct. Or if said Board of Trade shall elect not to give such bond of indemnity, then it (2) may at its own expense commence legal proceedings in a court of competent jurisdiction against such person, firm or corporation and said telegraph company to enforce this contract and determine whether such person, firm or corporation is using said quotations for such illegal purposes, or is using such quotations in conducting a bucket shop, or contrary to the terms of his, its or their agreement aforesaid; and in such suit said telegraph company shall enter its general appearance as defendant, and if in said suit or in any suit brought by any such person, firm or corporation against either or both of the telegraph companies, parties hereto, it shall be determined by injunctional order or final judgment or decree conclusive upon the parties to said suit against the right of such person, firm or corporation to have or use said quotations, then said quotation service to such person, firm or corporation, shall be discontinued by said party of the second or third part furnishing the same, and said Board of Trade shall indemnify and save said party of the second or third part harmless against any loss, damage or expenses which may result to it by reason of said discontinuance of said service.

Third. It is further agreed by the said Board of Trade that it will cause to be kept quotation records showing the fluctuations throughout the day with the specific time of said fluctuations in the same manner as said quotation records have been heretofore kept, and that said parties of the second and third parts may at all times have access to said quotation records.

Fourth. The said parties of the second and third parts hereby agree to pay said Board of Trade for said quotations and other market news, the sum of twenty-five hundred dollars per month, payable on or before the second day of each succeeding month during said which they shall receive quotations, provided that the first pay-

ment shall not be required to be made until seven months after the going into effect of this contract, in accordance with the provisions of clause two of this contract. The proportions of said amount which shall be contributed by each telegraph company to be agreed upon between themselves. Thirty days after the termination of this contract the amount of money withheld by the telegraph companies as a security fund aforesaid shall be paid by them to the party of the first part. Provided, that if there are then pending any suits or claims against either of said telegraph companies on account of its refusal to furnish or continue furnishing said quotations, then the parties of the second and third parts shall have the right to retain a sufficient amount of said fund to amply secure them against said suits and claims, and on the final adjudication or settlement of said suits and claims, the amount withheld as security therefor shall be paid by the second and third parties to the party of the first part. But if said party of the first part shall give to the parties of the second and third parts a good and sufficient bond ample to protect them against said pending suits and claims, including all costs, damages and expenses, signed by some surety company in good standing and satisfactory to the parties of the second and third parts, then said telegraph companies shall pay the balance of said fund to the first party.

Fifth. The said party of the first part shall designate to parties of the second and third parts some officer of said Board of Trade to whom said telegraph companies, or either of them, shall apply for the correction of any faulty or inefficient service in the gathering, reporting or transmission of said quotations; or for any necessary change in said service and to whom said telegraph companies, or either of them may refer in case of any dispute which may arise as to the correctness of said quotations, and to whom said telegraph companies, or either of them, may apply touching any incidental question arising on account of said quotation service.

Sixth. Said party of the first part agrees to use all reasonable efforts to protect its property right in said quotations against purloiners thereof, and said telegraph companies agree that they will

join either with said party of the first part or other telegraph company having the right to distribute said quotations, or both, as plaintiff in any suit now pending or hereafter commenced, to protect said property right in said quotations from purloiners, provided that said telegraph companies shall be saved harmless by said party of the first part from any expense, costs, attorney's fees and damages incurred in or by reason of any such suit.

Seventh. Each of said parties of the second and third parts agrees that it will, whenever requested by said party of the first part, furnish to it a list of the persons who have discontinued said continuous quotations, to the end that said party of the first part (may at all times know the names of) may at all times know the names, locations and street addresses, of all persons, firms or corporations then receiving said continuous quotations.

Eighth. It is further agreed that said telegraph companies may furnish said quotations to any other telegraph company with which either of them now have or may hereafter have any operating contract or other arrangement, provided that every such telegraph company shall first sign a contract or agreement, running to said party of the first part, to abide by and conform to clauses two, six, seven and ten of this agreement.

Ninth. And the said party of the first part hereby agrees that it has not entered into and will not enter into any contract or arrangement with any other person or company who has or may acquire the right to distribute said quotations, in which contract or arrangement the said party of the first part has agreed or shall agree to pass upon applications of persons applying for the quotation service in a shorter period than those above provided for in the second clause of this contract. And it is further agreed that in passing upon application for said quotation service presented by either of the second or third parties it will act without discrimination, as between said second or third parties, or as between either of them, and any other person or corporation sending in applications for its patrons. And whenever the said party of the

first part shall have before it at the same time applications from the same person, firm or corporation presented through two or more persons, telegraph, telephone or ticker companies, if it approves any of said applications, it shall approve them all at the same time and shall notify at the same time all of said persons or companies, through whom said applications were presented, of such approval. This shall apply either when an application is approved affirmatively or by the failure of the said party of the first part to act upon any application.

Whenever either party of the second or third parts shall obtain and deliver to the party of the first part an application for the quotation service from any person, firm or corporation, who at the time of making said application is receiving said quotations with the approval of said first party, then the party of the second or third parts may furnish said quotations on said application without waiting for an approval by the party of the first part as hereinbefore provided in other cases.

Tenth. The words "continuous quotations" wherever used in the second and seventh sections hereof, shall be construed to mean every service of quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes. Each of said telegraph companies agrees not to furnish said continuous quotations to any person, firm or corporation, except as provided in sections two and eight hereof, the only intent and purpose hereof being to prevent the misuse of said quotations for said unlawful purposes, or in said unlawful business, and not to discriminate between persons desiring them for other than said prohibited purposes.

Eleventh. This agreement shall be in force for one year from the date hereof and thereafter until the first party shall give to said second party and third party, or said second party and third party shall give to said first party, sixty days written notice of its or their intention to terminate the same.

In witness whereof, the parties hereto have hereunto affixed their signatures and corporate seals, the day and year first above written.

BOARD OF TRADE OF THE CITY OF CHICAGO,
(Seal) By William S. Warren, President.
Attest: GEO. F. STONE, Secretary.

THE WESTERN UNION TELEGRAPH COMPANY,
(Seal) By Thos. F. Clark, Vice-President.
Attest: A. R. BREWER, Secretary.

POSTAL TELEGRAPH-CABLE COMPANY,
(Seal) By W. H. Baker, Vice-President and General Mg'r.
Attest: CHAS. P. BRUCH, Ass't Secretary.

The bill then alleged that on the 31st of July, 1900, it made a contract with the Cleveland Telegraph Company, and the Milwaukee Telegraph Company, of like import. The bill then alleges that no other telegraph company had signed or acquired the right to sell or distribute said quotations except the Gold and Stock Telegraph Company, which was a subsidiary company of the Western Union. And the bill then stated that they were willing to make like contracts with any telegraph company desiring to have and distribute the quotations. That no person, firm or corporation is receiving the market quotations from the telegraph companies without having first signed one of the agreements in writing mentioned in the contract heretofore set forth, and that the Christie Grain & Stock Company, nor C. C. Christie, had signed any such agreement as provided in said contract or complied with it; that the complainant hoped they would do so, but that they were by connivance and surreptitiously and wrongfully receiving the quotations at Kansas City, Mo., without right, and by theft, or from persons who were authorized to have the same, without right, and were exposing the same to public view, without having signed the contract heretofore mentioned. That the conduct of the Christie Grain & Stock Company was calculated to, and in time would, destroy the value of the complainant's quotations, and that no telegraph company would pay the complainant for the same, as long as competition existed and that if any one person in the United

States could receive them without authority, then they could be furnished to "bucket shops" throughout the United States and thus destroy the complainant's rights in the property.

The bill then states that the Christie Grain & Stock Company had demanded of the Western Union Telegraph Company that it furnish to it, the Christie Grain & Stock Company, the market quotations, and had informed the telegraph company that it would not sign the application required by the contract between the telegraph companies and the Board of Trade, and that the Christie Grain & Stock Company had demanded the quotations without signing the contract, and that it insisted that the Western Union Telegraph Company, as a common carrier, was obliged to furnish the quotations to the Christie Grain & Stock Company without the signing of the contract, and had threatened the telegraph company that if it did not comply it would take steps to make it do so, and that the complainant feared that by claims and threats of the Christie Grain & Stock Company the Western Union or the Postal Telegraph Company would be induced or forced to furnish the quotations to it in violation of the agreement between the telegraph companies and the complainant, unless restrained by injunction of the Court.

The bill then alleges that it has no adequate remedy at law to protect its rights in the quotations against efforts to distribute the same, and no adequate remedy for damages, and its remedy was in equity and asked that the Christie Grain & Stock Company and C. C. Christie be enjoined from using or distributing the quotations or receiving the same from any person or telegraph company, and that the telegraph companies be enjoined from complying with any threats or demands of the grain company, or from furnishing any quotations to it or to Christie; and enjoin them from using, selling or distributing, giving away, or allowing the same to be given away, and enjoin the telegraph companies from making any contract with the Christie Grain & Stock Company or C. C. Christie for the furnishing of the quotations.

ANSWER.

The Christie Grain & Stock Company and C. C. Christie filed their joint and several answer to this bill (found pages 60 to 86 of the Record), and set up that they reserved to themselves all benefit and advantage of exceptions which might be had or taken to the manifest errors, uncertainties and other imperfections in the bill of complaint, and that the purposes of the charter were correctly stated by the complainant, as appeared in the bill, but denied that the complainant had right or authority under its charter to promote uniformity in the custom and usages of merchants, who were not members of the corporation and denied that it has power to interfere in any manner with the customs and usages of merchants throughout the country, or that it had right or authority to inculcate principles of justice and equity in trade, or interfere with trade in any manner in any transaction not conducted on the floors of the exchange or with the Board of Trade itself. And denies that it could in any manner facilitate the speedy adjustment of disputes pertaining to business not connected with the Board of Trade and its members. Or that it had authority under its charter or otherwise, to control or secure benefits of co-operation in the furtherance of its business pursuits if such purposes and regulations were contrary to the law of the land, or against public policy of the State of Illinois, or the State of Missouri, or the general government of the United States of America. Denies that it had a right to hold property as stated in the bill or that it had power to make rules or regulations, if such rules or regulations were contrary to law or against public policy, and charged that they only had authority to expel members for good and sufficient cause alone, which should not controvert the law of the land or the public policy of the State, and that it only had authority to carry on business such as is usual in the management of boards of trade, and admitted that it had no right to conduct a telegraph business, and that its charter did not impose upon it the duty of furnishing to the public or persons

the knowledge of quotations of prices made between its members in its exchange hall; and set up that before the Board was incorporated in 1859, it run a chamber of commerce substantially the same as it did thereafter, and from the time of its incorporation, the management of the exchange hall and the business of the complainant had kept pace with the increase of business in the country and for the purpose of benefiting members and the public generally, the Board of Trade had from time to time, since organization, sent out or allowed to be sent out, reports and statements of the market price of commodities dealt in on the floor of the exchange room so that the public for a large number of years, more than thirty (30), had been able to obtain and knew the market prices of such commodities. And that the growth and progress of the Board of Trade, and commercial influence had been commensurate with that of the city in which it was located; that its initiation fee was $10,000.00, and had some 2,000 members, and alleged that it maintained an exchange hall upon the floors of which, the business of its members was transacted; that the business upon the exchange floor stood in the gateway of commerce; that the members met there to buy and sell and trade by open *viva voce* bidding, and when a purchase and sale was made, memoranda thereof was taken down by both parties to the transaction. That four-fifths of the grain and provisions produced in the States and territories of the Northwest were dealt in in this market; and that the business had become so vast that it fixed the market prices of grain, bread stuffs and meats for the extensive territory tributary to Chicago, and seriously affected and largely controlled the values of the necessities of life throughout the United States and the civilized world. That from August, 1883, the complainant permitted the Western Union Telegraph Company to occupy its exchange hall to collect, transmit and send out without restriction reports of the dealings, fluctuations and changes in the markets on the board; that this information was sent throughout the country and delivered without discrimination to all persons who desired to pay for the same. That the customers of the telegraph companies and of its commercial news in quotations were scattered through-

out the land wherever the business of buying of grain and provisions was followed; that the Western Union Telegraph Company had a lease upon the Gold and Stock Telegraph Company, which latter corporation in turn had, and has, a monopoly of the telegraph instruments know as "tickers;" that telegraph circuits were established by the Western Union with Chicago and other cities in the United States by means of Morse instruments and tickers over which market information passed to every office and place of business connected with its circuit throughout the country, and were automatically registered so that every merchant or dealer provided with the instrumentality wherever he might be, was instantaneously from minute to minute, and from hour to hour, during the sessions of the board, informed of the fluctuations and changes in the market prices of grain and other products; that the Board of Trade was incorporated for the purpose of affording facilities to its own members in doing business with each other, but as to the outside world they acted as brokers and commission merchants for producers, shippers, consumers and merchants whom they represented; that the board had so used its franchises and its members so conducted its business, that it had become a vast commercial influence and fixed the market values of grains and agricultural products for a large territory, and the fluctuation in prices upon its exchange powerfully affected the market prices of the necessities of life throughout the world. That this great power and influence was owing to the vast aggregation of products which were drawn into its portals for a market and which paid tribute and tolls to its members; that the great bulk of this business, though in form of mere private and individual dealings of its members, was in reality the business of the numerous producers, consumers, merchants and shippers for and on whose behalf they dealt. That an important factor in taking this accumulation of business to its exchange, in vesting in the board the power to regulate and determine the market prices of grain, etc., was due to the fact that the complainant had admitted and invited the telegraph companies, who are *quasi* public corporations, to the floor of its exchange and permitted them to gather the market quotations, changes and fluctua-

tions of its products and send them instantaneously from the floor of the exchange by its telegraph instruments and lines to the principal cities by means of ticker circuits to the places of business of all persons desiring such information, which information was furnished to all persons without discrimination who were willing to pay for the same; that in this way, the business of the country of buying and selling agricultural products was controlled by the market values as fixed by the Board of Trade, and the business dealings in such products had been brought to conform to the method of receiving instantaneous and continuous market reports inaugurated and for years persisted in by the Board of Trade and the telegraph companies; that this market news is a species of property and that if the statistics with reference to the business of its association and the aggregate business of its members had at the start, been gathered and compiled at the expense of its members and for their sole use, it might have been private property held in trust by the board for the use of its members; but that the board did not so exercise its franchises, but admitted the telegraph companies to the floors of the exchange and permitted and encouraged them from day to day and from year to year, to gather these statistics, quotations, etc., of the dealings on the board and telegraph them immediately throughout the land to whomever would pay for such information, until the business of the country had adapted itself to these means and appliances, and the point was reached when the quotations on the board were puissant to determine the market values of the products of the country, and all persons dealing in such products could not without the knowledge and benefit of these immediate quotations, intelligently and safely so deal; and the fact that the dealings between its members were private, did not change the fact that the statistics had been charged with a public interest and that there was a duty due to the public in respect thereto; and that the quotations had become clothed with the public interest by being used in a manner to make it of public consequence and affecting the community at large; so that they must be impressed with a public trust, interest and use and be controlled by the public for the common good to the extent of the interest created in

the public; and that the right of the public was to all alike, common to all and upon equal terms. That the market information and reports are not collected by the complainant for the use of its members alone; and that complainant under the law and in justice and equity could not conduct its affairs for a long term of years as to create a standard market for agricultural products and acting in concert with the telegraph companies, build up a great system for the instantaneous and continuous indication of that market and its fluctuations, until the public and all persons dealing in the products, conform their business to this system, and until, by usage and custom of merchants thus advanced by the methods adopted by the board and telegraph companies, such instantaneous market quotations should become necessary to the successful and safe transaction of business, and until the system had become impressed and affected with the public interest, and then be allowed to discriminate between persons and parties, and say that one shall and another shall not have such information.

The bill then charged that the telegraph companies, and particularly the Western Union Telegraph Company, for more than thirty years, as public carriers and distributers of news, had been acquiring information from the producers and consumers of the country as to the crop conditions of the country and the market prices of the necessaries of life throughout the world, and caused this information to be carried into and communicated to the Board of Trade of Chicago in the first instance and the board had received and accepted it, and its members from such information acquired during the whole time, acted as commission merchants for the consumers and producers of the country in selling and buying the commodities of the country and by selling and buying property which was not their own, but which belonged to the people, and have fixed a market value and price of the necessaries of life to the people, so that the prices so fixed do not belong to the board or its members, but to producers and consumers of the commodities bought and sold. That during all this time, the public had been interested in such market prices fixed in this manner, and during all this time, the complainant had permitted its members to so act and the information of prices to be so gathered

and disseminated to the public so that the prices upon its exchange and the market information and quotations from its inception has continued to the end, coupled with the public interest, and that no person or corporation has the right to withhold from the public, information as to such transactions and prices; and that such information is not now, and never was, a subject of barter and sale to the exclusion of the rights of the public therein.

The answer then specifically denies that the Christie Grain & Stock Company was or ever had been engaged in the business of conducting a "bucket shop" or any other place wherein was conducted or permitted the pretended buying or selling of commodities, or dealing in them on margins or otherwise, without any intention of receiving or paying for the property bought, or delivering the property sold, or that it ever did or does intend to engage in any such transactions. But that it deals in commodities as fixed by the market prices of the country and with reference to all kinds of information or conditions affecting the price of commodities, and used all public information obtainable in fixing the prices.

The bill then charged that the Christie Grain & Stock Company conducted a business in Kansas City, in the State of Missouri, in accordance with the laws of the State and of the United States, and in conducting its business acted practically and substantially in all purchases and sales and contracts for future delivery and the carrying out of its transactions as do the members of the Board of Trade, the complainant, in transacting its legitimate business on the floor of the exchange room.

The bill then proceeded to set up and charge that the market quotations constituting the instantaneous and immediate continuous market quotations of the Board of Trade of the complainant, sent out over the country by the telegraph system consisted only of market quotations of the purchases or sales of commodities for future delivery and nothing else.

The answer then, by way of affirmative defense, alleged that the market quotations which the complainant was seeking by its complaint to enjoin the defendants from using, or having, are

and were, quotations made by the complainant itself, and caused and permitted to be made by it, at a place, to-wit: the exchange hall in Chicago, kept by the complainant for the purpose of making quotations by its consent and connivance in violation of the laws of the State of Illinois and of the State of Missouri, concerning "bucket shopping," and that the quotations which complainant is seeking to prevent defendants from having, are quotations which are the result of transactions in the exchange hall kept by the complainants, which transactions at said place kept and permitted to be kept by complainant, are themselves transactions resulting in the quotations which defendants are charged with using, which are themselves "bucket shop" transactions and the result of "bucket shop" transactions carried on and encouraged and fostered by the complainant, in violation of the laws of the State of Illinois, and of the State of Missouri, and inasmuch as the complainant itself has been, and is now, engaged in fostering, protecting and engaging in deals and transactions and keeping a place in which others are permitted to engage in deals and transactions which are themselves "bucket shop" transactions, and which violate the laws of the State of Illinois and of the State of Missouri, and which transactions result in market quotations which are the same market quotations that complainant is seeking to prevent the defendant from using, and for that reason the complainants have no standing in equity; and further demonstrating the defense, the answer sets up and alleges that the transactions resulting in the market quotations sought to be enjoined, are transactions conducted on the exchange floor owned, operated and maintained by the complainant from day to day and hour to hour, in which place, with the knowledge, acquiescence and connivance of the complainant, transactions in grain, etc., are had and continue to take place in which the parties to such transactions do not intend to deliver what they sell or receive what they buy, but intend, and in fact, do from time to time, settle the differences between the buying and selling prices or the selling and buying prices without any intention to deliver on either side. And wherein they close the transactions when the price reaches a certain figure without any intention to make deliveries or to re-

ceive proffered deliveries; and that such transactions so carried on and permitted by complainant are the transactions which result in the market quotations which are the same market quotations which the complainant is seeking to prohibit the defendant from using. That it is not only conducting and permitting to be conducted such place, but is engaged in the business of maintaining a clearing house for the express purpose of settling differences between the parties to such deals on the floor of its exchange without making or intending to make any deliveries or of receiving the property dealt in and in all which transactions both parties contemplate and intend to settle merely the difference between the buying and selling price; and that the complainant inaugurated and maintains a place for the purpose of enabling such parties to engage in such "bucket shop" transactions; that the statutes of the State of Illinois, where the complainant is located and where such transactions were carried on and permitted to be carried on, and which the said complainant is violating in making such quotations which it seeks to keep defendant from using, is as follows:

STATUTE OF ILLINOIS.

"That it shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept within this state any bucket shop, office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins; or when the party buying any of such property or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold; and the keeping of all such places is hereby prohibited. Any corporation or person, whether acting individually or as a member or as an officer, agent or employe of any corporation, association or co-partnership, who shall

be guilty of violating this section shall, upon conviction thereof, be fined in any sum not less than $200 and not more than $500; and any person or persons who shall be guilty of a second offense under this statute, in addition to the penalty above described, shall, upon conviction, be imprisoned in the county jail for the period of six months, and if a corporation, shall be liable to forfeiture of its charter. And the continuance of such establishment after first conviction, shall be deemed a second offense."

"It shall not be necessary, in order to commit the offense defined in section 1 of this act, that both the buyer and the seller shall agree to do any of the acts therein prohibited, but the same crime shall be complete against any corporation, association, co-partnership or person thus pretending or offering to sell or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property with a view to any such transactions as aforesaid, shall be deemed an accessory, and upon conviction thereof, shall be fined and punished the same as the principal and as provided in section one of this Act."

The answer then alleges that in the same manner and for the same reasons, complainant is making said market quotations as the result of transactions prohibited and contrary to the laws of the State of Missouri, to-wit: Sec. 2223 of the Revised Statutes of 1899, page 620.

Sec. 2223. PLACES FOR BUCKET SHOPS PROHIBITED.—It shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept in this State any office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other commodities, either on margins or otherwise, without any intention of receiving and paying for the property so bought or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins, when the party selling the same or offering to sell the same does

not have the property on hand to deliver upon such sale; or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold; and the keeping of all such places is hereby prohibited. And any person, whether acting individually or as a member or as an officer, agent or employe of any corporation, association or co-partnership, who shall be guilty of violating this section, shall, upon conviction thereof, be fined in any sum not less than five hundred dollars, and not more than fifteen hundred dollars, and any person or persons who shall be guilty of a second offense under this section, in addition to the penalty above prescribed, shall, upon conviction, be imprisoned in the county jail for the period of not less than six months and not more than twelve months. (R. S., 1889, Sec. 3836.)

The answer then alleges that the complainant is keeping and causing to be kept and aiding and assisting in keeping, a place in violation of both these statutes from day to day and hour to hour, with its knowledge and consent where such transactions are carried on and permitted by the members of the board, in buying and selling grain and commodities without any intention on the part of any of the parties to make deliveries and intend to settle the difference between the buying and selling price; and that such market quotations sent out, displayed and exhibited as the result of such illegal transactions permitted by the complainant, are the same and only market quotations which the complainant is seeking to prevent defendant from using. And for that reason, the complainant itself, is and has been creating and permitted to be created, in violation of law, the very quotations which it seeks to prevent the defendants from using and for that reason, if no other, complainant in the case is without standing in a court of equity.

The answer then sets up that complainants have no right or authority to convert the quotations to the exclusion of the rights of the public, and that any sale or pretended sale made by such complainant, of such quotations is absolutely void as against the rights of any persons who may be a member of the public. That if the board should have the right to control and sell the quotations it would interfere with and impair the rights of the public,

and denies that the complainants have the right, power or authority to restrict the use of the quotations of market reports or to dictate in any manner the distribution thereof, and has no right or authority to dictate as to whom any telegraph company may sell or furnish the service to, and charges that the quotations are such a species of property, that the complainants cannot in any way under authority of any law, right or justice, *prevent the same* from being made public or in any way making them free to the public.

The answer then states that it admits the making of the agreement of April 1st, between the telegraph companies and the complainant, but alleges that such agreement is of no binding force or effect, either upon the complainant or the telegraph companies, and it is of no effect beyond fixing the fact that the Board of Trade had attempted to sell the quotations and market reports at a price which the telegraph companies agreed to pay; if in fact the board has any interest in or power to sell the market reports and quotations, which the defendants deny; that said agreement was null and void for the reason that it was contrary to public policy and contains provisions absolutely ultra vires to complainpolicy and contains provisions absolutely *ultra vires* to complainant and as to telegraph companies and the public, and then sets up that ever since the year 1892, the Board of Trade, by various devices, had attempted to create a monopoly with its members in the grain business of the country and especially that known as the commission business, and for years had attempted to devise ways and means down to this last attempt, to-wit: the agreement made between the telegraph companies, all of which previous schemes have been failures; that the agreement entered into April 1st, 1901, was to foster and maintain a monopoly in the members of the Board of Trade and to compel the telegraph companies to enter into such an agreement; that the agreement was not entered into voluntarily by the telegraph companies, but was brought about by the dictation of the complainant in refusing to comply with the law and to allow the market reports to be sent out to the public. That such act on the part of the complainant is contrary

to the law of the State of Missouri, applicable to pools, trusts and conspiracies, which is as follows, to-wit:

"That from and after the passage of this article, all arrangements, contracts, agreements or combinations between persons or corporations, or between persons or any association of persons or corporations, designed or made with a view to lessen or which tend to lessen full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, and all arrangements, combinations, contracts, or agreements whereby or under the terms of which it is proposed, stipulated, provided, agreed or understood that any person, association of persons or corporations doing business in this state shall deal in, or offer for sale in this state any particular or specified article, product or commodity, and shall not, during the continuance or existence of any such arrangement, combination, contract or agreement, deal in, sell or offer for sale in this state, any competing article, product or commodity, are hereby declared to be against public policy, unlawful and void; and any person, association of persons, or corporation becoming a party to any such arrangement, contract, agreement or combination, shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to the penalty provided for in this article."

"Every pool, trust, agreement, combination, confederation or understanding, conspiracy or combination entered into or created, or organized by any corporation under the laws of this or any state, or any partnership or individual or other association of persons whatsoever with any other corporation, partnership, individual, or any other person or association of persons to regulate, control, or fix the price of any article or articles of manufacture, mechanism, merchandise, commodity, convenience or repair or any product of mining of any kind or class, or any article or thing of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price or prices when so regulated, determined or fixed, and all agreements, combinations, confederations or conspiracies or pools made, created, entered into or organized by any corporation, partnership, individual or association of individuals to fix the amount or limit the quality of any article or thing whatsoever, or of any article of manufacture, mechanism, commodity, convenience, or repair, or any product of any class or kind of mining are hereby declared

illegal. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of, or party to such pool, trust, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation, buying from or selling to any other person or corporation, who is not a member of or a party to such pool, trust, agreement, combination, confederation, association, or understanding, any such article or thing aforesaid, it shall be a violation of this article."

The answer then set up that the contract between the telegraph companies and the complainants was void and in violation and conflict with the Interstate Commerce Laws of the United States passed and adopted by the United States Congress on August 7th, 1888, and known and designated as Chapter 772, as amended.

The answer then admitted that the Christie Grain & Stock Company had not signed the contract provided for in the agreement with the telegraph companies or any correspondent's contract therein mentioned and then set up that neither the telegraph companies nor the complainant had any right nor authority to insist on any person or corporation signing such an agreement as a condition to receiving the market quotations and using them in their business and again charging that they are public property clothed with a public interest and the right to use them as he sees fit even though he might use them in violation of a criminal law. Defendants then deny that they were wrongfully or stealthfully acquiring the market reports or quotations, and deny that they were receiving in Kansas City surreptitiously or by theft, or using or exposing the same to public view as in the bill alleged. And admitted that they had made no contract with the telegraph companies. The bill then specifically denies that any authorized use of the quotations would be calculated to destroy any value of the quotations

to the complainant or that the telegraph companies would not take them; then specifically alleges that the complainant and the telegraph companies have no right, power or authority to enter into any agreement of the kind, character or description mentioned, which would prevent competition with others as to the collection and transmission of market reports. Defendants then admit that if one person within the jurisdiction of the Court be entitled to secure the quotations without restrictions, which the complainant imposes, as set forth in its bill, he may, if he desires, furnish them to all others in the United States desiring them; that the Board of Trade has no authority to dictate what people, violating any law, have the right under any other law, to receive, as members of the public, said quotations, and deny that defendant is conducting a "bucket shop," and alleges that the Board of Trade never had the exclusive right to use and disseminate the market reports, nor to control or dictate what should be done with them, or who should have access to them after they have passed into the hands of the public carriers of the country and be distributed by said public carriers throughout the country for the use and benefit of the public.

The bill then alleges that the telegraph companies have been receiving for some time the said market reports and transmitting them by telegraph from the City of Chicago, in the State of Illinois, to Kansas City, in the State of Missouri, and have been delivering the same, however, only to such parties within the State of Missouri as would sign the contract provided for in the agreement between the Board of Trade and the telegraph companies, and are delivering them in the State of Missouri to such parties as the Board of Trade directs and orders them to be delivered only, and when the Board of Trade shall order their delivery, and are sending said quotations from the State of Illinois aforesaid into the State of Missouri, only to such parties as the Board of Trade shall approve; and that the telegraph companies are now receiving said market quotations and news onto their wires and public facilities, and when received they have been, and now are, immediately possessed with a public trust, and the right of the public thereto in the hands of the companies, and they cannot be permitted to enter into any arrangement by which they can be allowed to re-

ceive them into their possession onto their public facilities and telegraph wires so as to deprive the market quotations of its public character when coming into their possession as public carriers, and using the facilities of the United States so as to discriminate, or in any manner as to justify it in refusing to give the same to the public after receiving the same, nor use the public facilities for their transmission and retain the same as the private information of the Board of Trade, or any other party that the Board of Trade might designate; and when so receiving its quotations cannot be allowed to make the same the subject of private contract, either with the Board of Trade or with themselves, and they cannot, and ought not to be allowed, under any agreement, to use the public facilities and bring such public information and quotations into the State of Missouri, or elsewhere, and be permitted to use them so as to discriminate against the citizens of this State, and to allow such parties to have and receive them, which the Board of Trade only may direct; and refuse to allow other parties to have them upon proper terms and conditions, and that such is the effect of the contract so made and entered into, and of the transactions and acts of the companies in pursuance thereof.

The answer then replies that the Christie Grain & Stock Company has formally demanded of the Western Union Telegraph Company and of the Postal Telegraph Company, the said market quotations and has notified the companies that it would not sign the application required to be signed as stated in the bill, in the contract between the telegraph companies and the Board of Trade; that it has demanded the market quotations without signing said application, and admits that it insists that the Western Union Telegraph Company is a common carrier, and is obliged to furnish said quotations to them without the signing of the application, and admit that it has threatened said telegraph company that if it did not comply, it would take steps to compel it to do so.

The answer then states and charges that the defendant has a right under the law of the land to obtain from said common carriers the said last mentioned telegraph companies, the market reports, and that neither of said telegraph companies has the right to refuse to furnish the same to defendant upon the same terms

that the telegraph companies have been furnishing them to the public generally for the last number of years, and that the telegraph companies would do the same but for the illegal contract entered into between the parties. That said contract is illegal and void, contrary to law and the public good and is no excuse for not complying with the reasonable demands of defendant.

EXCEPTIONS.

The complainant filed exceptions to this answer, which were overruled without prejudice to the complainant, and which are unnecessary to state on this appeal.

REPLY.

The reply of the complainant to the answer, was the general reply under the equity practice, maintaining its position to sustain its complaint and its right to contest the matters set up in the answer.

STATEMENT OF EVIDENTIAL FACTS.

The cause was tried upon the depositions of various witnesses, which are fully set forth in the Record. The complainant introduced in evidence the contracts made between the Board of Trade of the City of Chicago and the Western Union Telegraph Company, the Postal Telegraph Company, the Milwaukee and Cleveland Telegraph Companies, pleaded and set up in their complaint and heretofore copied in the bill.

There was introduced on the trial, a large number of exhibits, consisting of the bound volumes of the rules of the Board of Trade, one volume being dated June 19th, 1901, and another volume dated later, December 16th, 1901, both of which are sent up as original exhibits in this cause; also the annual report or record of the

proceedings of the Board of Trade, all of which are on file in this Court. There was also introduced in evidence a clearing-house sheet of the Board of Trade of the City of Chicago, one of the original blanks being attached at the back of the printed Record in this cause; a large amount of other minor exhibits which will be used on the argument are also on file in this Court; the complainant introduced in evidence, its charter, which is substantially as pleaded in the bill and is found in the front of the exhibit known as the printed rules of the board.

The testimony shows that the Board of Trade of the City of Chicago was incorporated by an act of the Legislature in 1859, and had its place of business in said city; that the Christie Grain & Stock Company was a corporation under the laws of the State of Missouri, at Kansas City, engaged in the general grain business, buying and selling grain for cash and future delivery, and was a very extensive dealer; that the Western Union and Postal Telegraph Companies are incorporated under the laws of the State of New York, and are engaged in conducting a telegraph business in all the States and Territories of the Union, having telegraph wires for telegraph news from each and every State into each and every other State; that C. C. Christie, one of the defendants, was the president of the Christie Grain & Stock Company.

While the bill alleged that the defendants were bucket shopping, there was no testimony whatever tending to show that they were, and the complainant abandoned that proposition on the hearing, and introduced no testimony whatever upon it; and there was no testimony showing or tending to show that it was engaged in anything but a legal or proper business.

The record shows that the Board of Trade from the time of its incorporation in 1859 down to the present time was conducting a board of trade in the City of Chicago, and maintaining an exchange hall, and it now has a membership of nearly 2,000; that the individual membership fee is $10,000.00; that it has a board of directors, and that Mr. Warren is its president; that the board, ever since its organization, has been maintaining a public hall in which are located what are known as "pits"; to-wit, a wheat pit, a corn pit and an oats pit, in which its members, on certain hours

of every business day, congregate in large numbers and buy and sell in these respective pits, large quantities of grain for future delivery. That these pits simply consist of a circle around which are elevated steps in which the members by yells and calls and signs with their fingers and otherwise, make known to each other what they are offering to buy or sell, and the prices at which they are offering to buy and sell; that in these pits there is no cash business of any kind done; that they are maintained solely and exclusively as places for the buying or selling of property for delivery at some future time, and never for immediate delivery; that the cash business done on the board is done around the edges of the board at little tables, where samples of wheat, corn, or oats are kept by parties having it actually for sale; no grain, however, being kept in the Board of Trade; the results from minute to minute, and hour to hour of this speculative business in the pits is taken down and reported by an operator who sits on the edge of the pit and who, in turn, hands it to an operator operating a ticker, who immediately reports it to the telegraph companies, and which is sent throughout the United States from minute to minute, continuously, as the market runs on. These offers and acceptances made by the members in the pit for future delivery constitutes solely what is known as the continuous market quotations of the Board of Trade of Chicago, and these continuous market quotations do not consist of quotations of the price of any sale of anything for cash or immediate delivery. In other words, the reports of cash transactions in Chicago constitute no part of the continuous market quotations which the complainant is seeking to enjoin the defendants from using; but is made up of reports of purely speculative future transactions; the members that assemble in the pit and deal in this future business, ever since the board was organized, have been largely engaged in the business of selling futures for customers throughout the United States, upon a commission requiring their customers to put up margins, ranging from $100 to $200 for each 10,000 bushels of stuff dealt in; and under the system and rules when the margin is exhausted, they close out the transaction and charge the customer up with the loss. If it results in a gain for their customer, they credit him

with his profit, and render to him an account of his profits, or losses, sending him a check for the difference between the buying and selling price, if there are such in his favor, and demanding a check from them for the difference, if there is such, against him.

The testimony tends to show that these market quotations have been for more than thirty years, with a few temporary interruptions, sent out and freely distributed to grain dealers, merchants, and the public generally, throughout the United States, through the instrumentality of the telegraph system, to all parties who might pay the usual charges for that service. It was shown, however, by the testimony, that it had existed prior to that, but the great fire in Chicago had destroyed any records back of thirty years ago, therefore it was impossible to get the exact date when it commenced. But for the last thirty years these quotations have been continuously, with few interruptions, for short periods, distributed and disseminated throughout the United States and the world, by the consent, permission and with the aid of the Board of Trade, and the telegraph companies have been permitted to go upon the floor of the exchange hall without price, for nearly all of this time, gathering the information and sending it broadcast throughout the country, charging parties only the usual and ordinary fee for such information, and this news, known as the continuous market quotations, has been distributed without discrimination, up to the time of making the contract in question, and without any conditions or limitations as to its use; that this has continued for such time and so that the grain markets, not only of the West and Northwest, but of the United States and of the world, have become largely affected and controlled by these quotations, and farmers, consumers, producers and grain men throughout the United States, buying, selling and dealing in commodities and bread stuffs, and the millers in the handling of flour, have become controlled by them as market quotations, and so that no person, corporation or institution engaged in or interested in the grain business or the products of grain, as well as provisions of the country, can safely deal in or handle such commodities without the knowledge of these instantaneous and continuous quotations on the Board of Trade of the City of Chicago,

and while it is true that there are other boards of trade handling grain, notably Kansas City, Minneapolis, Milwaukee, Toledo, St. Louis, New York and other cities, which boards of trade make similar market quotations, yet they are all largely or more or less affected by the market at Chicago, and by these quotations sent out from time to time, and that such has been the case for more than thirty years. Prior to making the contract in question in this case with the telegraph companies, the board had permitted the telegraph companies to obtain this information themselves from the exchange hall and send it broadcast throughout the country, and during all this time, the members of the Board of Trade have been also receiving, through the medium of the telegraph service of the United States, information sent into its hall of exchange from all the other boards of trade and markets of the world, and constant reports of supplies of grain, and movements of grain for export and sale, and using the same to acquire information as to the condition of the weather, of rains and frosts, and any and all other matters that would affect the markets of the produce of the country, and using this information acquired throughout the country with the purpose of not only keeping its members who deal in the pits posted thereon, but after condensing the information, sending the same throughout the country in turn to the public and world at large.

These members of the Board of Trade in buying and selling for future delivery in the pits have been for all this time largely representing the consumers and handlers of products of the country, and in many cases, buying and selling, perhaps for themselves and on their own account, as conditions will suggest. Under the rules of the board no party is permitted to be upon the exchange hall or buy or sell property except through these members, and any party in the United States desiring to buy or sell commodities there, must do so through the members of the board only. In short, as to the general nature, origin, effect and purpose of these transactions, we refer to the answer upon the subject, as being a complete statement of what the evidence showed to be the facts in reference thereto. The testimony further showed, as we contend, and as will appear from the portions thereof quoted in our brief upon

the subject, together with reference to pages upon which the testimony is found, that the Board of Trade during all of said time, and is yet, engaged in the business of so called bucket shopping, that is to say, that they are keeping and maintaining a place wherein, with their knowledge, consent and aid there is being permitted by members of its board, the buying and selling of property for future delivery, without any intention or purpose on the part of the parties so buying and selling in its pit and in its exchange hall, of making deliveries of the commodities sold or of receiving the commodities bought. But that so far as the dealings in the pits on the exchange are concerned, they are simply dealing in futures with the intention of settling the difference between the buying and selling price, without any intention or expectation that any of them will ever be delivered. That the Board of Trade conducts, as is shown by the testimony, a clearing house, which is a very elaborate piece of machinery, and that all members buying or selling property in the pits for future delivery, at the close of the day's business are required to make out a statement upon what is known as a clearing house sheet, upon one side of which they shall strike a balance of the total amounts that are due them from other houses and upon the other side, the total amount due from them to other houses, and strike a balance of the amount they claim and demand a check from the clearing house on the day's business, or send a check to the clearing house if the balance is against them, for the day's business. And that this striking of balances is simply the settling of the differences between the prices at which they have bought and the prices at which they have sold, during the day. That the clearing house handles all of this business for the members under the supervision of the Board of Trade, receives the checks if sent in by the members, and pays out by its check, if going to the members, simply and only the differences between the trades made during the day in the speculative business and that thus the trades are absolutely cancelled between the members and the deals closed and no deliveries whatever made of any kind or character thereon. And that this business goes on from day to day and hour to hour, and

that no cash business of any kind is included in it, or ever was at any period of its history.

The testimony shows that in this class of deals, very little is ever actually delivered; that before the delivery months roll around, these trades are all "rung up" and cancelled by a system of "rings" and cancellation, which will be hereafter described in the argument, before the delivery day arrives. And that the effort of members dealing in this speculative business is to close everything out possible, so that at the end of delivery day, their books will be clean and cancelled; it is shown by the testimony that in all of this speculative business not to exceed one to two per cent of all of the business dealt in for future delivery ever results in any deliveries. In other words, that 98 to 99 per cent of all of it is "rung up" and closed out through the clearing house scheme, without delivery and by the mere settling of differences between the selling and purchasing prices; this testimony is undisputed.

It is further shown that the continuous market quotations which the complainant is seeking to prevent the defendant from having or receiving are the quotations of these future offers to buy or sell, thus closed out without deliveries, and that such quotations are made up of no other kind or character of transactions; except that occasionally on delivery day, there may be some small amount (not over one to two per cent of the total amount dealt in) actually delivered, when the members are unable to "ring" them out and cancel them. And this is shown by the rules of the Board of Trade heretofore referred to and offered in evidence, the particular sections of which are heretofore set up and copied in the answer.

The testimony further showed that the Board of Trade at the time of the commencement of this bill had a rule which would not allow the price of any *actual transaction* to be sent out as a part of the market quotations. And that they were wholly made up of these speculative trades. This rule known as section 22, page 17 of the rules, dated June 19th, 1901, and filed as an exhibit in this case, reads as follows.

"No member shall quote by public or private wire, or otherwise, any price except such as is the first for the commodity immediately following the time indicated on the tape or such as is

thus posted on such blackboard. No member shall be permitted to use prices made in any *actual transaction* as quotations or give the same to any person other than the one making the trade."

The Statutes of the State of Illinois and of the State of Missouri, declaring these kinds of transactions carried on by the Board of Trade and its members and permitted to be conducted by the aid and connivance of the Board of Trade, to be illegal and bucket shopping, were introduced in evidence and are as heretofore set forth, in the statement of the pleadings. After the making of the contract between the Western Union and the Postal Telegraph Company and the Board of Trade, upon which they rely in the complaint, Mr. Christie, on behalf of the Christie Grain & Stock Company, went to Chicago and applied to the telegraph companies for the continuation of market quotations as he had theretofore been receiving them for years. The telegraph companies referred him to the Board of Trade; he called upon the president, Mr. Warren, and had a talk with him, together with his attorney, Mr. Robbins, in reference to getting a continuation of these quotations in his legitimate business. They declined to give them to him unless he would sign a contract, such as is provided for in the Board of Trade and telegraph companies' contract, and would agree to place his deals on the Board of Trade of Chicago. This, Mr. Christie for himself and his company, declined to do and for this reason he was refused the quotations, that is to say, the testimony shows that he was not only required to sign the contract, which is set forth in the agreement between the Board of Trade and the telegraph companies, but that the Board of Trade demanded in addition to this, that as a condition to their conceding to the telegraph company that he should have them, that he, Christie, would agree to place his business with the Board of Trade of the City of Chicago, out of which the members of the Board of Trade would have been entitled to the commission on all of the vast business that he did. Upon his refusal they declined to allow him to have them.

The testimony further shows that the telegraph companies for years prior to this time, at that time, and yet are, furnishing with the consent of the Board of Trade, quotations brought from the

State of Illinois into the State of Missouri, to grain dealers in the City of Kansas City, Missouri, and in St. Louis and elsewhere, that the contract is being enforced against citizens of this State and that they are giving the quotations only to such members in this State and elsewhere as have submitted to the terms of the agreement with the Board of Trade and the telegraph companies and who have had the approval of the Board of Trade to receive them. And that all parties in the State of Missouri to whom they are sending and delivering them have signed the contract and yielded to the Board's demand that their business must be placed exclusively through the Board of Trade of the City of Chicago.

We desire to here state that there are four other suits pending upon the same bill by the complainant; one in Omaha, Nebraska; one in Cincinnati, Ohio; one in Indianapolis, Indiana, and one at St. Louis, Missouri; and that the complainant is seeking in all of these cities by a similar bill to enjoin all parties from receiving the quotations unless they will submit to the terms of the agreement between the Board of Trade and the telegraph companies. The bill in this case was the first one filed, but was not the first one tried. The case in Cincinnati, known as the Board of Trade vs. O'Dell Commission Company, reported in the 115 Fed., 574, was the first one tried. In that case, Judge Thompson refused the injunction upon a full hearing, upon the same evidence that is before the Court in this case, solely upon the ground that the testimony showed that the complainant came into court with unclean hands and were themselves keeping a place in the City of Chicago, in violation of the laws of the State of Illinois and of the State of Ohio, in that they were conducting a bucket shop and that the quotations which they were seeking to prevent parties from having were the result of bucket shop transactions carried on by the complainant itself.

The case in Omaha has been argued before that Court, but not yet decided and probably will not be until this cause is determined in this Court.

In the Indianapolis case, Judge Baker, upon a temporary application, refused to issue the writ, but did not hand down an opinion. And the case at bar is the only one in which the complainant has been successful thus far in its temporary application.

The testimony further shows that these market quotations, as now gathered and delivered to the telegraph companies, costs the Board nothing whatever, but that on the other hand, a minor corporation, known as the Cleveland Telegraph Company, gathers them on the floor of the Exchange and delivers them to the Western Union and Postal Companies, and instead of it costing the Board of Trade anything to gather these quotations and furnish them to the telegraph companies under the contract, that as a matter of fact another corporation, the Cleveland Telegraph Company, does all of that work without cost to the Board of Trade and that as a matter of fact the Cleveland Telegraph Company, in addition to gathering them without cost to the Board of Trade, actually turns over into the treasury of the Board of Trade a percentage of its profits. This Cleveland Telegraph Company appears to be incorporated under the laws of Ohio, at Cleveland, but never did any business in that State, but operates on the Board of Trade and we were unable to ascertain from the testimony, and the record fails to show after a diligent inquiry, as to who the Cleveland Telegraph Company is, but the officers of the Board of Trade do testify that the profits of that company are turned over to the Board of Trade; and the annual report of the Board of Trade, which is filed as an exhibit here in this Court, shows as a part of its receipts, that there was turned over to it during the year 1900 on account of the market reports the sum of $2,874.75, and we charge that the testimony shows that members of the Board of Trade are in fact the owners of the Cleveland Telegraph Company and that some of the officers of the Board of Trade are the controlling officers of the Cleveland Telegraph Company. The testimony in the cause we charge, in addition to all this, fails to show that the Christie Grain & Stock Company, or C. C. Christie, posted or exhibited any of the continuous market quotations which the complainant is seeking to enjoin it from using, until after they have become publicly posted in Kansas City, Mo., and on the trial the following stipulation effecting that point was entered into between the counsel, which appears on pages 194 and 195 of the record:

"It is stipulated that at the time of the filing of this bill the defendant, the Christie Grain & Stock Company was, and ever since

has been, posting in its office in Kansas City the greater part of the continuous quotations collected upon complainant's exchange and transmitted to the telegraph companies, and it was also during said time, purchasing from the Western Union Telegraph Company, and posting the ten-minute quotations of prices upon complainant's exchange. That said continuous quotations are furnished by the Western Union Telegraph Company to at least six different grain commission men in Kansas City without objection of complainant, and that such quotations are by said commission men posted at once upon blackboards in their offices.

"Defendant, however, claims that these continuous quotations posted by it are not posted until first made public in Kansas City, which last proposition the complainant denies.

"It is further agreed that during all the period above mentioned, said defendant, Christie Grain & Stock Company, has also been posting on its blackboard, in its place of business, market quotations of prices made on the following exchanges: New York, Minneapolis, St. Louis, Kansas City, Milwaukee, Memphis, New Orleans, and also from Liverpool, London and other European markets.

"The complainant reserves the right to show that such quotations of other markets are not the continuous quotations, but only occasional quotations of prices on such markets."

On this line the testimony shows through Mr. Warren, president of the Board of Trade, that these market quotations, after having been sent out and posted on blackboards are open to the public in the City of Chicago, Cleveland, Cincinnati, St. Louis, Kansas City and other places, in different offices in said cities. The testimony further shows that nobody was receiving these quotations except such parties as had signed the contract provided for in the agreement between the Board of Trade and the telegraph companies; that these quotations, however, were publicly posted in Kansas City and publicly posted in the Board of Trade in Kansas City, immediately after they were made and were posted by grain firms in Kansas City, on their blackboards in various places in Kansas City; that the defendant got them by telephone, by messenger boys, by personal observation and sometimes by wire; there was no testimony showing or tending to show that the defendant surreptitiously acquired these market quotations and no testimony

showing or tending to show that they had not been made public throughout the country before the defendants at any time used them in its transactions at Kansas City. The testimony shows that for more than 30 years these quotations were received without discrimination and publicly used and posted throughout the United States, with the knowledge and acquiescence of the Board of Trade, and that the telegraph companies had freely distributed them for that period with an interruption of only short intervals, for the use of everybody.

The chief operator of the Western Union Telegraph Company testified that the Western Union Telegraph Company had gathered these quotations on the exchange floor and been sending them out and distributing them among the people and that he had no recollection of a time when this was not done, except a short period following 1890, and another period prior to that in 1896; except these times he states: "I have no recollection of any time when the Western Union did not furnish them to everybody who wanted them," and that the whole market price of the West is made by the fluctuations of grain on the Chicago Board of Trade for future delivery; and that nearly every purchase and sale in the West, the Northwest and the Southwest is based on the price of that property in Chicago each day."

And that it would be impossible to do any business in the country without knowing these continuous fluctuations of prices on the Board of Trade, and every witness who testified upon the subject stated that these continuous market quotations had been sent out for so long a time and under such circumstances as to affect the business of the country to such an extent that the grain markets of the United States and of the Southwest had been absolutely made and controlled by these prevailing prices in Chicago, both on and off various Boards of Trade located in the West, Northwest and Southwest, and that prices of grain go up and down on the markets of Kansas City, St. Louis, Minneapolis and elsewhere as these fluctuations in Chicago go up and down. That nearly all of the trades in the pits on the Board of Trade for future dealing and out of which the quotations grow, emanated from deals originating or culminating in what is known as "rings," "stop or-

ders," "hedges," "transfer trades," "spreads," "direct settlements" and "scalping."

That "rings" were a system by which one party having bought or sold for future delivery in the pits to some other party, and such other party having sold to a third party, and the third party to a fourth party, and so on, without limit, until it reached the party who originally started it, and thus all of the transactions were wiped out and "rung up" or cancelled, nothing delivered and a settlement only on differences between the parties.

That "stop orders" was a system by which customers and dealers throughout the country, telegraph orders to members of the Board of Trade at Chicago, or give them orally to them, to buy or sell a certain quantity of grain for future delivery, fixing upon it a stop or limit, at which they desire it closed, if it goes against them, or sold if it goes in their favor, and that mere differences in the prices were settled between them and no deliveries made.

That "hedges" was a system practiced by dealers in grain, that is, parties who would actually buy stuff throughout the United States or in the country; and by millers who would buy grain for grinding into wheat or meal, would after having bought the stuff in the country, go on the Board of Trade and sell against it so as to protect themselves from loss, and in the case of millers, when it was ground into flour and their flour disposed of, they would go into the market through the members of the Board of Trade and buy in the future what they had sold and thus cancel the difference between the buying and selling price; and that the grain men handling actual grain would sell against it on the Board of Trade of Chicago, and after selling their actual grain in the markets of the country or exporting it, would go on the Board of Trade through its members, and buy in their speculative sale of grain and settle the difference between what they sold it for in the pit and what they bought it in for in the pit.

That "transfer trades" were trades by which brokers, members of the board, would go into the pit and buy or sell, articles for future delivery, and afterwards transfer or assign their deals

to somebody else, and get out themselves entirely, settling on the differences and making no deliveries.

That "spreads" were deals by which a party would buy grain for future delivery in one market, say in St. Louis or Kansas City, and sell the same article in the same amount on the Board of Trade of Chicago, taking the chance that the difference between the two markets might enable them to close it out with a profit; and that they would then reverse the transaction and sell in the market bought in and buy in the market sold in, so that they would get a profit of the difference between any further spread or widening of the prices in the two markets they closed it out; and that no deliveries were ever made or contemplated on these transactions.

That "direct settlements" were a class of settlements where two or more brokers would have a deal on the Board of Trade in futures and would simply agree among themselves to settle the deal and cancel it and pay each other the difference without any deliveries.

That "scalping" was a system by which a man of limited means and without money or with small amounts, would go each day on the Board of Trade, being a member of it, and buy or sell grain and close it out the same day, on taking a small profit or assuming a small loss, pay the difference and go home at night with the business absolutely closed up, having his profit or pocketing (?) his loss.

The particular testimony bearing upon these transactions will be referred to by page of the Record in the argument.

There will be found in the report of the Chicago Board of Trade introduced in evidence and filed as an exhibit in this case, the compiled information as to the quantity of grain produced in the country and in the various States, and of the amount handled through this future dealing system on the Board of Trade, which is specifically set out in the argument; bearing upon the question of the impossibility of any intention of the members to make deliveries upon any of the transactions.

We give the above as a condensed statement of the situation and such other matters as bear upon the case will be aptly referred to from the Record in the argument.

ASSIGNMENT OF ERRORS.

The assignment of errors, though copied in the Record, are now again referred to for convenience, as follows:

ASSIGNMENT OF ERRORS.

Come now the defendants and file the following assignment of errors to the judgment of the trial Court, and upon which they will rely for grounds of reversal on appeal in the above entitled cause.

I.

The Court erred in holding and decreeing that the complainant was entitled to any relief in this cause.

II.

The Court erred in holding and finding that the complainant in this cause had any sufficient or substantial interests in the subject of the controversy sufficient to justify any relief in equity, and erred in refusing to hold that the complainant had no interest sufficient to justify any relief in the cause.

III.

The Court erred in holding and finding and was in error in permitting complainant to have any relief because there was no testimony of any kind showing or tending to show or which justified a holding or finding that the defendants were using or posting any of the quotations mentioned in the bill of complainant, until after they were first made public.

IV.

The Court erred in its decree and judgment in that under the undisputed evidence, the contract pleaded in the bill entered into between the Board of Trade and the Telegraph Companies was void and was an unjust discrimination against the rights of the defendants and the public, and in not holding that said contract was beyond the power of the Board of Trade to make, and that it was beyond their power to undertake to sell the quotations to the telegraph companies and to bind the telegraph companies to discriminate and to submit to the Board of Trade the question as to who should or should not receive the same, for the reason that the market quotations were impressed with a public trust and were not the subject of barter or sale between the Board of Trade and the telegraph companies, and that even if they were the subject thereof, the contract was void as being an unjust discrimination against the defendants and the public as to who should or should not receive the market quotations and was an unjust regulation against the defendants and the public, and beyond the power of the companies contracting thereto.

V.

The Court erred in granting the complainant any relief for the reason that said contract between the Board of Trade and the telegraph companies, set up and pleaded in the bill, pertained to and attempt to affect the question of interstate commercial relations and to affect the matter of interstate commerce, and as such and for that reason, it placed and attempted to place even if otherwise valid, an unjust and unwarranted limitation and embargo upon interstate commerce and was in direct conflict and violation of Section 8 of Article 1, of the Constitution of the United States.

VI.

That said contract between the Board of Trade and the telegraph companies pleaded in the bill, was void and the Court erred

in holding that the complainants were entitled to any relief thereunder for the further reason that said contract was wholly beyond the power and authority of the Board of Trade or Telegraph Companies to enter into, for the reason that the same was an attempt to enter into a private contract pertaining to a subject and subject matter in restraint of contracts, and the free right to contract and in restraint of interstate commerce, in violation of said provisions of the Constitution above cited.

VII.

That the Court erred in giving the complainant any relief because the contract made and entered into between the Board of Trade and the telegraph companies, pleaded in the bill, and upon which the right of the complainant was founded, was void and beyond the power of said parties to contract concerning, for the reason that the same violates the anti-trust act of Congress, passed July 2nd, 1890, found in Volume 26, United States Statutes at large, Page 209, Chapter 647, and as enunciated in the case of Addyston Pipe & Steel Co. vs. U. S., in the 175th volume of the United States Supreme Court Reports, page 211, in that it was an attempt on the part of the parties thereto, to attempt to enter into private contract to limit, discriminate and control, as against the defendants and the public at large, the free and unlimited right to engage in interstate commerce and in interstate transactions, and to have and receive information in the state of Missouri and was an attempt on the part of the contracting parties thereto, to control a subject of interstate regulation and interstate commerce, to the exclusive use and benefit of the complainant.

VIII.

The Court erred in holding that the complainant was entitled to any relief for the reason that the contract made and entered into between said complainant and the telegraph companies was void in that it undertook and prohibited the defendants and the public from receiving and having the market quotations upon the pay-

ing of reasonable charges therefor, and upon such terms as other parties like situated were receiving the same.

IX.

The Court erred in rendering a decree for the complainants because the said contract between the Board of Trade and the telegraph companies was *ultra vires*, and wholly beyond the authority or right of the parties to enter into, and was an attempt to control a subject of interstate commerce, and a subject in which the defendants and the public had an interest and a right.

X.

The Court erred in granting the complainant relief for the reason that the contract between the Board of Trade and telegraph companies declared upon in the bill, attempts to and does discriminate against who shall or shall not receive the market quotations brought into the state of Missouri over the public facilities, to-wit: over the telegraph lines, so long as the testimony shows that they were distributing to the public generally.

XI.

The Court erred in granting to the complainant any relief because the contract made and entered into between the Board of Trade and the telegraph companies undertakes to contract with reference to market quotations which are public property and is an attempt on the part of the Board of Trade and the telegraph companies to unjustly discriminate against the public and against the grain dealers of the country, and is a written and avowed declaration and purpose on the part of the Board of Trade to control the entire grain market of the country, and to prevent any and all persons from using or having the quotations of the grain markets unless such persons should either be a member of the Board of Trade of Chicago, or agree to trade through and by its members only. And if sustained and enforced, places in the power

of the Board of Trade, the complainant, to prevent any person or persons in the United States from having or receiving the market quotations, or knowing the condition of the public market, unless such parties pay tribute to the Board of Trade or its members.

XII.

The Court erred in finding for the complainant for the reason that the evidence and record shows that the Board of Trade, the complainant, upon application of the defendants, refused to allow them to receive the market quotations unless the defendants would agree to place its deals and trade through the members of the Board of Trade, the complainant, and for that reason, also, the object and purpose of the contract was shown to be leveled against competition and is a contract permitting unjust discrimination.

XIII.

The Court erred in its finding and decree and in the opinion rendered upon which the decree is founded in that the market quotations which the complainant sought by the bill to prevent the defendants from using or having, were market quotations made under such circumstances and continued for so many years to be used without limitation by the public, that the same had become impressed with a public right, and a part of the community property of the country at large, and in holding and decreeing that the complainant was entitled to any exclusive property right therein as against the defendants and the public.

XIV.

The Court erred in finding for the complainant and entering the decree for the further reason that the testimony in the cause shows that the market quotations had been put into the channels of commerce for more than thirty years, and placed in the hands of the public without limitation, so that the business of the country had been accommodated to and the grain relations of the coun-

try were regulated thereby, so that the same had become a part of the public property and impressed with a quasi-public trust, and hence, were not subject to control, discrimination or limitation, by the complainant or the telegraph companies, and therefore were not the subject of control by either of said companies and in decreeing that the complainants were entitled to any relief with reference to the limitation or qualification concerning the same, and in enjoining the defendants from the reasonable use thereof, as a part of the public.

XV.

The Court erred in entering the decree for the complainant for the reason that the testimony shows that said market quotations were impressed with a quasi-public trust and were brought into the state of Missouri and distributed to numerous other parties, residents of said state, and when brought into the state, they were within the control of the Courts, enforcing obligations of common carriers, and public rights, without discrimination, and when so brought into the state, the defendants were entitled to the use thereof upon paying the telegraph company its reasonable charges therefor, and any attempt on the part of the Board of Trade or the telegraph companies to control the same for the exclusive use or benefit of parties that the complainant, the Board of Trade, might direct, was wholly beyond the authority of either of said corporations, and therefore complainant was entitled to no relief.

XVI.

The Court erred in its judgment, decree and opinion, in holding that the market quotations could not be the subject of control by the Courts until the legislature had manifested its intention to make them public property, for the reason that the public right always existed therein, and the right to enforce the right of the public and of the defendants thereto, exists in the courts independent of any action of the legislature.

XVII.

The Court erred in not holding, decreeing and finding that said market quotations were property impressed with a public trust and right and in its judgment and decree, in giving to the complainant, the right of discrimination and exclusive control pertaining thereto.

XVIII.

The Court erred in its decree, judgment and finding because said market quotations were impressed with a public right, and that the Board of Trade could not deprive the public of their right thereto, and in not holding and finding that the public and the defendants had a right to receive the same upon paying reasonable charges of the telegraph company for transmitting the same.

XIX.

The Court erred in its judgment and decree for the reason that the testimony did not show that the defendants were engaged in bucket-shopping, or violating the laws pertaining to bucket shops, and such being the fact, even if the Board of Trade and the telegraph companies had the right to contract pertaining thereto, the defendants were such parties as were entitled to the quotations in any event, notwithstanding they had refused to sign the contract and application provided for in the agreement between the Board of Trade and the telegraph companies, and being such parties, the court erred in its order restraining the defendants from the use of the same.

XX.

The Court erred in rendering a decree for the complainants because under the evidence in the cause complainant was entitled to no relief in equity for the reason that they come into court with unclean hands in that the quotations which complainants sought to restrain and prohibit the defendants from having or using, were

quotations made and permitted to be made and brought into existence at a place kept, maintained and fostered by the complainant, in violation of the statutory laws of the state of Illinois, and of the state of Missouri, and the complainant coming into court under such circumstances had no rights in the quotations which a court of equity should enforce.

XXI.

The Court erred in rendering the decree for the reason that the judgment and decree of the Court goes entirely beyond and is not within the issues under the pleadings, in that it undertakes to and does not only prohibit the defendants from using or having the quotations for use in its business, but prohibits the defendants from even knowing or getting information pertaining to the market quotations and prohibits and enjoins them from having or possessing knowledge however received, and that it prohibits the defendants from allowing quotations with reference or pertaining to the Chicago market on the floor of the exchange, from passing over its wires, even though not used or offered or claimed to be used by defendants for the purpose of trading or dealing with its patrons or customers. And in that said decree prohibits the defendants from knowing or being advised of market quotations passing over their wires, or having information of what passes over their wires pertaining to quotations, even though they should never use or offer to use the same.

XXII.

The Court erred in not dismissing the complainant's bill for want of equity.

XXIII.

The Court erred in not dismissing the complainant's bill and in entering the decree in favor of defendants, because said bill was wholly insufficient in equity to entitle it to any relief.

XXIV.

The Court erred because under all the evidence in the cause the same presented no equity or cause for equitable interference.

XXV.

The judgment and decree of the Court is erroneous because it is wholly unsustained by the testimony and is against the evidence and the weight of the evidence.

XXVI.

The Court erred in rendering its decree for the complainant because the undisputed evidence showed that the Board of Trade had wholly exceeded its power and authority under its corporation charter, in that its attempt to sell or traffic in market quotations with the telegraph companies was wholly foreign to the purpose of its incorporation, and for that reason its acts in entering into the contracts with the telegraph companies were *ultra vires*.

SPECIFICATION OF POINTS OF ERROR RELIED UPON AND FOR DISCUSSION HERE.

I.

That the finding and decree of the Court was erroneous and should have been for the defendants because the contract made and entered into between the Board of Trade and the telegraph companies as against the defendants in this case and other citizens of the State of Missouri, was void and beyond the power of the parties to make and in violation of the Anti-trust Act of Congress, passed July 2nd, 1890, found in Vol. 26, U. S. Statutes at large, page 209, chapter 647. As interpreted and enunciated by the decision of the Supreme Court of the United States in the 75 U. S. Rep., page 211, Addyston Pipe & Steel Company vs. United States,

in that it was an attempt on the part of the Board of Trade and the telegraph companies to enter into a private contract to limit, discriminate and control as against the defendants and the public at large, and particularly the citizens of the State of Missouri, of the free and unlimited right to engage in interstate commerce and interstate transactions, and was an attempt on the part of the contracting parties to control the subject of interstate regulation and interstate commerce as against the citizens of the State of Missouri and other States than the State of Illinois, to the exclusive use and benefit of the complainant.

II.

That the Court erred for the reason that the contract made and entered into between the Board of Trade and the telegraph companies was an attempt to discriminate against the citizens and the commercial interests of the country unjustly as to who should and who should not have and receive the market quotations upon paying reasonable charges therefor, and if carried into effect tends to, and does monopolize and concentrate in the hands of the Board of Trade the right to control and affect the public necessities, breadstuffs and provisions of the country and build up in the complainant a monopoly therein; and to build up in the hands of the complainant the exclusive right to buy and sell commodities for future delivery and to compel the citizens of other States to pay tribute to members of that institution, and place the exclusive business with them, and preventing other parties like situated from engaging in lawful pursuits; and is an illegal restraint upon free and unlimited trade in public information and property of the public.

III.

That the Court erred in granting relief to the plaintiff for the reason that the result of sustaining its contention would be to regulate interstate commerce relations and matter of interstate commerce, and an unjust and unwarranted limitation and embargo

on interstate commerce in direct violation of Sec. 8 of Art. I of the Constitution of the United States.

IV.

The Court erred in sustaining the plaintiff's complaint because the continuous market quotations were impressed with a public right and was a subject of information held in the nature of a quasi public trust, and that neither the Board of Trade nor the telegraph companies could enter into any contract to limit the information or discriminate against the public or seek to make the public matter a subject of private and exclusive barter and sale, or confine the same to the exclusive and private interests of the Board of Trade or the telegraph companies; and that such market quotations were of such public character as that they could not be taken away from the public or limited, so long as the Board of Trade continued in such business, and the telegraph companies communicated the information, and as a result placed in the power of the Board of Trade the arbitrary right to prevent any person or persons in the United States from having or receiving the continuous market quotations, or knowing the condition of the public market, unless such parties should pay tribute to the members of that board; and that the contract between the Board of Trade and the telegraph companies was an unjust limitation against competition in a legal line of business.

V.

That the decree was erroneous for the further reason that the telegraph companies, as public carriers, could not be permitted to receive onto its wires in the State of Illinois this public information and transmit the same into the State of Missouri, and there discriminate as to who should and who should not receive the same, upon paying the reasonable charges therefor.

VI.

That the decree was erroneous for the reason that the indisputed evidence disclosed that the market quotations, which the complainant was seeking to prevent the defendants from using or having, were permitted to be made by the Board of Trade with its consent, or connivance, and under its directions, at a place kept and conducted by the complainant, as a result and accruing from transactions that were illegal and in violation of the State of Illinois and of the State of Missouri, against bucket shopping; and that the complainant comes into Court with unclean hands, and that in equity the bill should have been dismissed for that reason alone.

VII.

That the decree was erroneous and should have been for the defendants because the testimony wholly failed to show that the defendants were receiving or using the continuous market quotations after they were first made public throughout the country, even if the contract between the Board of Trade and the telegraph companies was legal.

VIII.

That the Court erred because the undisputed evidence showed that the defendants were not engaged in bucket shopping, but in a legal business, and even if contract between Board of Trade and telegraph companies was valid, that the defendants were such parties as were not prohibited from receiving the quotations, regardless of the question, whether they signed the application provided in the contract between the Board of Trade and the telegraph companies or not, and that a court of equity could not enjoin the defendants from receiving the quotations when the testimony showed that they were such parties as would have been entitled to receive them in any event.

IX.

That under the evidence, if the contract between the Board of Trade and the telegraph companies was valid, the complainant has no standing in equity for the reason that it has no interest whatever in the subject of the controversy.

X.

That the decree was erroneous for the further reason that the bill of complainant was predicated upon the prime proposition, that it had an equity and interest in the controversy, upon the theory therein charged that the defendants were violating the law in engaging in bucket shopping, thus injuring and damaging the complainant, and the evidence failing to show that the defendants were engaged in such business, the basic proposition upon which the bill was planted wholly vanishes.

XI.

That the contract made and entered into between the Board of Trade and the telegraph companies was *ultra vires* the corporation, to-wit: the Board of Trade, for the reason that under its incorporation and the objects and purposes thereof, it was wholly beyond its authority or power to enter upon the field of pecuniary speculation and financial enrichment, and beyond their power to sell the public market quotations for its pecuniary gain and profit, even if same were the subject of private conversion or sale.

XII.

That the decree was erroneous for the reason that the undisputed testimony shows that the object and purpose of the contract between the Board of Trade and the telegraph companies was to place the matter of who should and who should not receive the quotations wholly in the power of the Board of Trade, and that such exercise of power would and did so operate as to result

in the ulterior purpose of making all the parties place their deals through members of the Board of Trade as a condition of trading at all.

BRIEF AND ARGUMENT.

The first proposition that we desire to discuss arises at the threshold of this case, and that is that the contract of April 1st, 1901, made between the Board of Trade and the Western Union Telegraph Company, the Postal Telegraph Company and all other subsidiary telegraph companies, is void and gives the plaintiff no right or standing in equity, for the reason that the same is in violation of the Act of Congress of July 2nd, 1890, found in volume 26, U. S. Statutes at large, page 290, chapter 647, being also found in volume 1, supplement of the Revised Statutes of the United States, second edition, 1874-1891, at pages 762-763, which, among other things, reads:

Sec. 1: "Every contract, or combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or of foreign nations, is hereby declared to be illegal."

"Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding $5,000.00, or by imprisonment not exceeding one year, or by both such punishments, in the discretion of the Court."

Sec. 2: "Every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations shall be deemed guilty of a misdemeanor and on conviction thereof, shall be punished by a fine not exceeding $5,000.00, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the Court."

Sec. 3: "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in any Territory of the United States, or the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any

State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared to be illegal."

* * * * *

Sec. 7: "Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor, in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including attorney's fees.

Sec. 8: "That the word person or persons wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

In light of this provision of Congress, let us now examine the contract, its nature, effect and results. This agreement is made by the Board of Trade of the first part, and the Western Union Telegraph Company of the second part, and the Postal Telegraph Company of the third part. This contract provides that the Board of Trade shall furnish simultaneously continuous quotations of prices made in transactions in the Board of Trade exchange hall, over wires to be furnished by the companies, and also that the telegraph companies shall be furnished other statistical information, which is from time to time posted on the blackboard in the exchange hall. The telegraph companies shall not furnish them to any bucket shop or any place where they are used as a basis for illegal contracts, and will not furnish them to any party who shall retransmit them, but it is distinctly stated that the telegraph companies shall not be bound to investigate as to who the parties are or for what purpose they are using them; and then provides how that subject shall be arrived at by providing that every applicant shall sign an application to the telegraph companies, which application addressed to the telegraph company by the party desiring to receive the quotations, must first recognize that the telegraph companies have acquired the exclusive right to distribute the quotations from the Board of Trade; and the applicant is required

to state that he is not and will not keep any bucket shop, office, store, or other place wherein is permitted the making or offering to make contracts respecting grain and provisions or other commodities, wherein, first, both parties thereto or the applicant intend that the deals may be closed or settled according or with reference to public market quotations or prices made on *any board of trade or exchange* upon which the commodities are dealt in, and without a bona fide transaction on such board. Second, or wherein both parties to the transaction shall contemplate or intend that the transactions may be closed or terminated when the market quotations made on such Board of Trade reach a certain figure. Third, that the applicant must agree that he is to receive them for his private and individual use, and will not communicate them to anyone else, except the applicant's correspondent, and then that they will require the correspondent to sign an agreement by which the correspondent shall also agree with the Board of Trade to abide by and comply with the provisions of the contract that the applicant makes. The applicant agreeing that the Board of Trade may sue his correspondent to prevent the use of the quotations; the applicant to further agree that if he violates the provisions of the contract, then he shall at once be cut off from said quotations; the contract then provides that when this application is signed, it shall be turned over by the telegraph companies to the Board of Trade, who shall thereupon instigate such investigations as it deems proper, to determine whether the said applicant desires said quotations for prohibited purposes; and if within a certain time the Board of Trade should not notify the company, that then they might furnish the quotations, but if within that limited time, the Board of Trade should find and notify the company that the applicant wishes the quotations for any of the prohibited purposes, the telegraph company should refuse to furnish them, and then if parties should sue the telegraph companies for refusing to furnish them, the Board of Trade should defend all the suits and pay counsel fees and damages and charges and fines and penalties, which the board might be put to; and then provides that if the board should, at any time after these contracts should be signed by parties, and after receiving the quota-

tions from the telegraph companies, find that the applicants are using them for the purposes of illegal gambling or in conducting a "bucket shop" as defined by the laws of the State of Illinois, or violating any of the agreements as contained in the applicant's or correspondent's agreement, then they might indemnify the telegraph companies and hold them harmless in acting upon the Board of Trade's information in withholding the quotations from the applicants. And upon the Board of Trade notifying them that in their opinion, the applicant was violating the contract, the telegraph companies should cease to furnish the quotations; then the Board of Trade at its own expense would defend any such suits, or if the Board of Trade elected to indemnify the company in the action carried on in the name of the telegraph company, that each of the companies were to pay the sum of $2,500.00 per month for the quotations.

Then follows a provision that the corporations to the contract should join in a common purpose of preventing purloiners from getting the quotations. It further provides that the telegraph companies shall furnish the board a list of the parties from time to time who were discontinuing the quotations, so that the Board of Trade may know who are the parties that are receiving them. Then the Board of Trade agrees that it will not make any contract with any other person or company who has acquired the right to distribute the quotations, for furnishing them upon any other or different terms than the one in question. Then follows a provision that the Board of Trade, in passing upon applications for quotations presented by the telegraph companies, will "act without discrimination as between the second and third parties, or as between either of them;" and the other person or corporation sending in applications and the telegraph companies agree not to furnish these quotations to anybody except as in the contract provided. It being stated in the contract that the purpose is only to prevent the misuse of said quotations for unlawful purposes or in unlawful business, and "not to discriminate between persons desiring them for other than said prohibited purposes."

It will be seen that this contract, upon its face, while pretending to limit the quotations for use to parties who should use

them for illegal purposes, the Board of Trade is made the sole and exclusive judge as to who are such parties. They are to pass upon that question themselves, and whether right or wrong, their decision is conclusive; and even though the parties may be parties using them for lawful purposes, yet if the Board of Trade decides that they shall not have them, they cannot get them, no matter how lawful their business may be, and the purpose of that contract as demonstrated from the testimony, was to allow the Board of Trade to pass upon the proposition, so that no party would be entitled to receive them, unless he placed his deals with members of the Board of Trade. The question as to whether or not the party was using them for illegal purposes is shown to be purely a subterfuge and an apparent excuse for making a contract which would permit them to exclude the public from having them, even though they were using them for legal purposes, because the power is left in the Board of Trade to determine for itself who are and who are not proper parties to have them, and that power regulating the subject, is left solely and exclusively to their arbitrary determination, right or wrong, and to this the telegraph companies yield.

The testimony shows that when Mr. Christie applied for these quotations, that the Board of Trade not only required him to sign the contract, but even then informed him that he could not have the quotations, unless he placed his deals through members of the Board of Trade. This appears at page 528 of the Record, where Mr. Christie states that when he applied for these quotations, he had a conversation with Mr. Warren, the president of the board, and Mr. Robbins, the attorney for that corporation, and in reference to that conversation, when he asked for the quotations, the following occurred:

A. "Mr. Robbins (attorney for the board), Mr. Warren (president of the board), and myself, and it resulted in their refusing to give me the quotations unless I would agree that every order I got, I would place on the Board of Trade. That I would not agree to."

Therefore, we insist that the contract made between the Board of Trade and the telegraph companies is void, under this Act of

Congress, for two reasons: First, upon its face it is a contract in restraint of trade or commerce among the citizens of different States, and an attempt to monopolize and combine against persons in trade or commerce, residents of different States; and, second, beyond the face of the contract, and by the attitude of the board in exercising their power thereunder, its result and effect is shown to result in restraint of trade between the citizens of the several States, and the creation of a monopoly in restraint of trade or commerce against and between citizens of different States. For the purposes of this discussion, it is wholly immaterial to consider whether the market quotations were or were not public property, or whether they are or are not private property of the Board of Trade; even conceding for the purposes of this argument (which we further on deny), that it is the private property of the Board of Trade, still, under this Act of Congress they cannot make or enter into any agreement of any kind which undertakes to contract concerning, affect, regulate or place an embargo or restriction upon, any of the market quotations sent out through the country, and in which it is dealing for a profit, as against citizens of the State of Missouri, or citizens of any other State, than the State of Illinois. It stands proven that this contract is a restriction and a restraint upon trade. It stands further proven that its effect and working according to the purpose and object of the Board of Trade in requiring all parties to place their trades with them, makes it a restraint, a regulation and an attempt to monopolize a subject of interstate commerce and commercial trade as to citizens of the State of Missouri or any other State than the State of Illinois, as against the Act of Congress heretofore referred to.

It is conclusively shown on the face of the contract and established as well in its operation, as admitted by the president in his conversation with Mr. Christie, that it attempts to and does create a monopoly in restraint of trade and commerce between citizens of other States. Under this Act of Congress it becomes wholly immaterial even to inquire whether parties are damaged by such contract or regulation of trade. Under this act, no party has a right to make or enter into any contract at all which attempts to directly affect the subject of interstate commerce as against the

citizens of the several States. It does not even require the contracts to be vicious in themselves. The Act of Congress is an absolute inhibition upon their power to make any contract whatever which in any way materially restrains or effects matters of interstate commerce, or create any kind of a monopoly, no matter how innocent the purpose may be on the part of the parties who make it. And no matter what may be their object or purpose, it is no justification under the Act of Congress for these corporations to enter into this contract affecting, or monopolizing, or regulating the subject of interstate commerce between the citizens of the several States, that their object and purpose may be to carry on a code of morals after their own liking, even if such was its real purpose.

It is no concern of the Board of Trade so far as interstate commerce propositions are concerned, as to how, or for what purpose, any parties in the other States after lawfully being entitled to the free unrestrained right to deal in public property, that they may afterwards in their own States, use it for an illegal or improper purpose. The Act of Congress is not dealing with the question in any such light. If parties in the several States are entitled to the free and unrestrained right to handle a subject of interstate commerce, no person or corporation in any one State can make an agreement which controls, restrains or creates a combination or monopoly in violation of this statute and then undertake to justify their own illegal purpose by declaring that they are justified in their illegal agreement for fear some other person in the other States may use the subject of the contract for improper purposes after having received them.

But in addition to this, defendants in this case, citizens of the State of Missouri, are conceded by this Record to be engaged in lawful business, and it is not intimated in the evidence that they are engaged in any of the business which the unlawful contract of the telegraph companies and the Board of Trade designates as "bucket shopping," or illegal transactions. Hence, this contract is absolutely void as against these defendants, and the complainants are in Court asserting rights against them, and in their bill, in the teeth of and against the provisions of the Act of Congress

referred to. And the complainant, in the prayer and concluding part of its bill, complains against the defendant that they would not sign this contract or make this application as provided for therein, and states that the defendants have demanded the quotations without signing their contract, and that the complainant fears that the telegraph companies will furnish them to the defendant without requiring the defendants to sign the contract unless restrained by injunction of the Court. And that inasmuch as the defendants have not signed the contract, they should be enjoined from having them, and the telegraph companies from allowing them to have them. And not only this, but the decree of the Court orders and adjudges that the defendants be restrained from having the quotations until they shall first acquire the right to receive the quotations by contract or purchase from the complainant or such telegraph companies as shall lawfully acquire from the complainant the right to sell and distribute said market quotations.

The object of the bill is to compel the defendants to enter into this arrangement and the injunction decree of the Court was that they should not be entitled to them until they had signed or entered into this arrangement with the complainant or the telegraph companies, provided for in this contract between the Board of Trade and the telegraph companies, which we insist was utterly void and in violation of the Act of Congress.

This decree and its enforcement, in our judgment, was squarely against this provision of Congress, and was in effect requiring the complainants to enter into this illegal arrangement and abide by it, even though under the undisputed testimony, such an arrangement as construed by the Board of Trade and its president, when the defendant made the application for the quotations, was in addition to all this, that he must kneel down and turn all of his business over to members of the Board of Trade in addition to signing the contract. This Act of Congress, its construction and effect, has been recently before the Supreme Court of the United States:

75 U. S. 211, *Addyston Pipe & Steel Company vs. U. S.*
(Being Vol. 20, Sup. Ct. Rep. 96.)

This case is decisive of the proposition presented here. In that case, it was shown that the defendants had entered into an agreement by which they would not compete between themselves in any of the States or Territories mentioned in the agreement in regard to the manufacture and sale of cast iron pipe, and that since the agreement, the defendants had operated their shops and been selling and shipping their pipe into other States and Territories under contracts for the manufacture and sale with citizens of such other States. The agreement was alleged to be entered into in order to enhance the value of the iron pipe dealt in by the defendants. On the trial of the case, the agreement entered into between the parties was in evidence. There was also evidence introduced as in this case tending to show outside of the agreement, what its ulterior purpose was.

That case was founded upon the Act of Congress above referred to. It was urged against that proceeding by the corporations, that the Act of Congress above mentioned, only applied to the States and in no way applied to the trade between the citizens or as affecting the trade or commerce between the citizens personally and individually of the States, but this contention was held untenable and that this act extended so as to cover and regulate interstate commerce by means of private contracts between individuals or corporations, as against individual corporations or persons of other States. And that when private contracts entered into undertake to regulate interstate commerce, they were within the power of Congress to condemn and that such contracts under that act were void, and that it was wholly immaterial what was the design or purpose of the contract. That the design does not constitute the material thing. The fact of the regulation is the important thing and it is unimportant that it was not designed or designed for any particular purpose. That the power of Congress to regulate commerce among the several States, included the power to legislate on interstate commerce, which affects or regulates that commerce.

In that case, it was objected by the appellants that even if their contract might affect interstate commerce, that it was only a reasonable restraint upon competition and was formed for the only

purpose of protecting the parties in an honest attempt of securing prices for their products that were fair and reasonable to themselves and the public, and that they did not come within the Act of Congress because the agreement was not one which amounted to a regulation of interstate commerce, as it had no bearing upon or relation to that subject. But this proposition was held to be untenable and that the effect of the contract was to create a more complete monopoly over the trade which the defendants were attempting to exercise, and in addition to this, that the manner in which the companies exercised the power in that case also showed that it was intended to be in restraint of competition and creating a monopoly and regulation of interstate commerce. By that arrangement the corporations in that case were enabled to deprive the public, in a large territory, of the advantages otherwise coming to them and affected the competition and controlled the question of supply; that any such contract created a monopoly and was tempered with the fear of competition and a purpose to control it. And that in order to avoid the contract and arrangement under this act, it was not essential that the contract should result in a complete monopoly or control, if it tended to that end, and deprived the public of the advantages which would flow freely from competition in the absence of the contract.

It was urged further in that case by the corporations, in their evidence and affidavits, that their prices and rules and regulations were reasonable, and the Court there said: "We do not think the issue an important one, because as already stated, we do not think at common law there is any question of reasonableness open to the Courts with reference to such a contract. Its tendency certainly was to give the defendants the power to charge unreasonable prices had they chose to do so."

And then further, said: That the power of dealing with any kind of monopoly, may be properly a matter for the regulation of Congress in any subject, where it may even ultimately affect the subject. That the regulations of commerce applied to the subject and not to the matter of internal police. "Contracts to buy, sell or exchange goods to be transported among the several States, the transportation and its instrumentalities and articles bought, sold or

exchanged for the purpose of such transit among the States, or put in the way of transit, may be regulated because they form a part of interstate trade or commerce." And that it was sufficient that the effect of the contract or agreement was to affect interstate commerce, and that all articles or subjects of commerce were proper matters of regulation, because they formed in themselves interstate commerce, and the immediate result and effect of the agreement there in question, necessarily put a restraint upon interstate commerce in respect to articles to be transported beyond the State in which they were made; and that the dealers in any commodity could not agree among themselves so far as it affected parties beyond the State lines upon any matter or subject, and in any restrain in the interstate trade. That interstate commerce consists of intercourse and traffic between the citizens or inhabitants of the different States and included all the transportation of property as well as persons, and the purchase, sale or exchange of any commodity. And that any agreement which operated upon the free restraint of the delivery of any article of interstate commerce, by either preventing or restricting it, was an embargo upon interstate commerce to that extent. And to that extent, violates the statute. And that it was useless for the appellants to contend that they did not intend to regulate or affect interstate commerce; that they did intend to make the arrangement they made, and if such was the result, it was wholly immaterial what was the intention or object of the makers.

The case at bar presents a situation in which the Board of Trade first assuming that the market quotations are its own private property, conceives a gigantic scheme to attempt to control these continuous market quotations in which the people of the entire Nation and of every State and Territory therein, are vitally interested and affected, and particularly the grain handlers and dealers in provisions, millers and all handlers of bread stuffs, are powerfully affected. And undertakes the furtherance of a plan of entering into a contract by which they will sell this subject of commerce to the telegraph companies, but by such contract retain the right to discriminate and determine who shall and who shall not receive the information; the purpose of which contract,

disguise it as they may, was to place the board in the absolute control of the question as to who should and who should not be their competitors throughout the United States, and to give them the power and right to determine arbitrarily and of their own accord, whether right or wrong, that every party to whom they did not want the quotations to go, could be decided by them, to be unfit persons to have the, and when they had so decided, that the telegraph companies should not allow such parties as they had excommunicated, to have or purchase of the telegraph companies this matter of commerce, under any terms or conditions.

This contract is of the most wicked and vicious kind, and tends absolutely not only to limit, but to absolutely stifle all competition and place it in the hands of this Board of Trade; to outlaw all citizens of all the States, the plain proposition and object being as shown by the evidence in this case, that no party was to have them, or be permitted to purchase them from the telegraph companies to whom they had been sold, unless such purchasers would pay tribute to this gigantic Board of Trade, and thus lay a complete embargo upon a great subject of interstate commerce; and the fact that in the contract they pretend to seek to prohibit only parties that may be intending to use them for illegal purposes, is but a deception and a subterfuge and an attempt to put on the cloak of morality, so as to give apparent semblance to good intentions. And use it for the purpose of justifying the violation of the law, and as a reason for their own violation of the law. But they are not the arbiters of the morals of the citizens of the several States of the Union, and if they are, Congress has made a mistake in overlooking them. They cannot justify the entering into contracts to cut off competition and discriminate against the citizens and build up a monopoly for themselves in any article of commerce by pretending that this subject of commerce is dangerous in the hands of other people; or that others may become equal gamblers with themselves. If the subject of commerce is an innocent one, it is no concern of this Board of Trade, and is no justification for entering into the contract as against citizens of some other States or Territories of the Union, even though they may, when they receive it, use it for improper purposes. That is

purely a subject for the local laws of the State to determine.

As well might it be said that a contract entered into between the manufacturers of fire arms of this country in violation of the interstate commerce act, and which attempted to cut off competition and build up a monopoly by leaving it to the firearms companies to determine what parties should have a right to purchase in the United States, was valid, because the contract said that its object was to prevent such parties from having them as might, in their opinion, use the same in the robbing of railroad trains, or in shooting across the public highway.

That the fact, if it be a fact, that parties might use these quotations after receiving them, for illegal purposes or partly illegal purposes, is no concern whatever of the complainant and is no justification for its unlawful contract.

57 Ind. 495 *W. U. Tel. Co. vs. Ferguson.*
92 Ill. App. 604 *Christie vs. Board of Trade.*
99 Ill. 487 *Cope vs. District Fire Assn.*

II.

But another proposition as to why this contract is in violation of the Act of Congress above referred to, is this:

The contract between the board and the telegraph companies sets forth the character and kind of a contract that the applicant shall sign to the telegraph companies, which is to be turned over to the Board of Trade to pass on, and its first provision is that the applicant shall agree as follows: "That our business is and shall be the business of ....., and that we are not keeping or causing to be kept and will not keep or cause to be kept, any bucket shop, *or any office, store or other place*, wherein is conducted or permitted the business of making or offering to make contracts, agreements, trades or transactions respecting the purchase or sale, or purchase and sale of any grain, provisions or other commodity or property wherein both parties thereto or the undersigned, contemplate or intend that such contracts, agreements or transactions shall be or may be closed, adjusted or settled according or with reference to the public market quotations or prices

made on any board of trade upon which the commodities or securities referred to in said contracts, agreements, trades or transactions are dealt in and *without a bona fide transaction on such board of trade or exchange.*"

This provision was the most iron clad and complete possible restriction and monopoly that could possibly be imagined. Under this provision, even though a party did not run an illegal business, even though he did not keep a bucket shop, but if he run any office, store or other place of business, he could not make any trades or transactions unless he made them on the Board of Trade that handled the articles in which he dealt; and must make the transactions on the Board of Trade or exchange. In other words, under this agreement, no party in the United States could be permitted to have these market quotations unless he would agree as a condition to it, in conducting his legitimate business, that he would have to do all of his dealing by transactions on the Board of Trade that dealt in the articles that he desired to deal in.

This is the most violent, vicious and absolute character of agreement to monopolize the trade of the country. No man in the State of Missouri or elsewhere would have a right to deal in the buying and selling of grain and use the quotations of this gigantic corporation, unless he would sign an agreement with the telegraph companies subject to the approval of the Board of Trade, that he would use these quotations only by making all of his transactions through this Board of Trade of Chicago. He could not have these quotations, or be permitted to use them if he should make a trade on any Board of Trade in St. Louis, Minneapolis, St. Paul, Kansas City, New York or elsewhere, but as a condition of receiving them, he must acknowledge the absolute and unrestricted duty of paying tribute to the Board of Trade of Chicago, otherwise, he would be refused the quotations. And further, after he had made such arrangement and agreed to do so, if he should violate it and not place his deals through the Board of Trade of Chicago after having received the quotations, he should be at once cut off. How is it possible for the complainants to escape the proposition that they are clearly in face of this provision of the United States Congress? And this provision of the contract required him, as a

condition of receiving these quotations of the market prices of the commodities on the Chicago Board of Trade, that in all contracts that he made it should be done on their own Board of Trade, and this provision has nothing whatever to do with bucket shopping, but was a plain, unvarnished agreement that no one should be permitted in the United States to do a legal business and be entitled to purchase these quotations unless he placed his business through the Board of Trade from which the quotations emanated, which are, and were, the quotations of this Board of Trade of Chicago, the complainants in this case. In other words, he should not have a right to buy and receive the quotations if, after receiving them, he made contracts or agreements of any kind, to be closed with reference to the market quotations on the Board of Trade of Chicago, unless he placed his trades through the Board of Trade itself. This provision, if allowed to stand, would compel as a condition precedent that every grain dealer or handler of grain throughout the United States who desired to buy the quotations of the Board of Trade of Chicago, should not be permitted to use them or make any trade; as to the commodity dealt in with reference to the prices of that Board of Trade unless he allowed the members of that Board of Trade to have a monopoly of the business; and when Mr. Warren, the president of the board, declined to allow the defendants to receive the quotations except upon the condition that they should place their trades through the Chicago Board of Trade, he was doing nothing more than the absolute provisions of the contract provided should be done. And we again urge that the contract which the complainant is seeking to enforce, and asking the defendants to be enjoined until they come in under, must be held in violation of the Act of Congress.

III.

And again, another peculiar provision of this contract in restraint of trade and of right, is that it requires every applicant who asks the quotations, to sign a written statement "that the telegraph companies have acquired the exclusive right to the quotations." In other words, as a condition to his having the right to trade in

these commodities, and use these quotations, the applicant and even the correspondent of the applicant, must admit that some contract made between the Board of Trade and the telegraph companies has transferred an exclusive right to such third party. We contend that the contract is one of the most complete schemes and efforts to absolutely control and monopolize for the use and benefit of the members of the Board of Trade of Chicago, any and all business in the United States, in reference to grain transaction, where such parties throughout the United States use their quotations, and that they shall not have the right to acquire the quotations at any price unless they shall so use them in their transactions as to pay tribute to the members of the Board of Trade.

IV.

For the purposes of the foregoing argument, we have extended to our adversaries a concession to which they are not entitled under the admitted facts in the case, namely: That the Board of Trade possesses a private and exclusive property right in these quotations unaffected by any public use or trust. We shall hereafter discuss, and, we believe, demonstrate, that such is not the character of the interest of the complainant in these quotations. Our position in the application of the doctrine of Federal control under the constitutional provision as well as the act of 1890, over these quotations, rests upon the proposition, first, that the telegraph companies are instruments of interstate commerce; and, second, that their business, including the transmission and dissemination of this information, is commerce, which, when it passes the limits of the State of Illinois, becomes interstate in its character. That for those reasons, the telegraph companies are incapacitated from entering into contracts of the character disclosed by this Record. As said by the Supreme Court of the United States in Texas vs. Tel. Co., 15 Otto 460-466:

"A telegraph company occupies the same relation to commerce as a carrier of messages, that a railroad company does as a carrier of goods. Both companies are instruments of commerce and their business is commerce itself."

As to the attitude of the telegraph companies as related to

the question at issue therefore, there can be no doubt and no further comment is necessary. While it may perhaps demand more consideration we nevertheless believe that it is equally true that the particular business in question here constitutes commerce within the meaning of the term as used in the Federal Constitution and Statutes. It is furthermore worthy of observation that the Board of Trade, by its contract, has put it beyond its power to deny this assertion upon our part. The practical effect of the contract between the Board of Trade and the telegraph companies is that the Board of Trade is selling to the telegraph companies this property, or commodity, if you please. It is true that as a part of the consideration certain restrictions are placed upon the ultimate right of disposition of this property by the vendee. But that is apart from the particular question here. We repeat, that the Board of Trade has sold, and the telegraph companies have bought, something which both parties are conclusively presumed to anticipate will be transmitted and which, for more than thirty years, has been transmitted and put into the channels of commerce in all of the States of the Union.

As said by the Supreme Court over and over again, commerce undoubtedly is traffic, but it is something more, it is intercourse, and by that is meant every species of commercial intercourse, and therefore it includes buying and selling and interchange of all the commodities subject to sale or purchase or exchange. Both parties to this contract contemplate a sale and an exchange of this commodity, to-wit: the information furnished by these quotations.

But it may be answered that the characterization of the effect of this contract, which we make, is too broad, and that it is more analagous to the arrangement under which the Associated Press transmits its messages over the telegraph lines and to other States, there to be delivered to subscribers. In other words, that this is not a regulation of commerce, but is merely the transmission of certain information to a selected list of correspondents. This, however, overlooks the vital distinction between the case of the Associated Press and that of the Board of Trade in this, to-wit: That the Associated Press deals directly with the recipients of the news,

the function of the telegraph company being confined to carrying the messages between the sender and the sendee. Whereas, in the case at bar, the Board of Trade has no contract with the recipients of this information as to the matter of transmission, and long prior to the time they received it, has absolutely divested itself of all ownership therein, by an absolute sale and delivery to the telegraph company. In other words, the telegraph company has broadened its public function as related to this class of business, and instead of confining itself to the mere instrumentality of carrying between two independent parties messages, has undertaken to itself become a party to the dissemination of this information. It is the owner of this information. It is its business not only to carry, but to find the purchaser of that which it has bought and received from its vendor, the Board of Trade.

Is there any difference in principle between this commodity which the telegraph company has received and paid for, and a shipment of coal which a railroad company might have purchased from a mine operator and which it proposed in turn to sell and deliver to such customers as it might find? In the supposed case of the railroad company, the coal is no more an article of commerce, and when it passes the borders of the State, interstate commerce, than are these quotations which the telegraph companies are daily selling to the world at large, and which they have been engaged in transmitting and selling for many years past. If, therefore, it be true that these quotations are the subject of commerce, and that the telegraph companies are instruments of commerce, it must follow as the night the day, that the effect of the contract between the telegraph companies and the Board of Trade is to regulate commerce, which, so far as its interstate feature is concerned, is utterly beyond their power. Neither is the effect of this contract, in so far as it regulates interstate commerce, casual or incidental to the real purpose of the contract, because the sole and only purpose of the contract relates to the sale and disposition of this commodity. No other earthly reason exists for the contract, except such sale and disposition. Eliminating that purpose and object from the contract entirely emasculates it of any object whatsoever.

V.

But independent of and outside of the consideration of the United States constitutional provisions and of the acts of Congress in reference to interstate commerce and eliminating it entirely from consideration, another feature is presented in this case, which cannot escape necessary consideration, and it is this: the Supreme Court of the United States in the case of Western Union Telegraph Company vs. Call Publishing Company, 181 U. S. 92, has decided, if indeed there ever was any doubt on the question, that the principles of the common law are operative upon all interstate commercial transactions independent of any regulation of the subject by Congress. Therefore, we present the proposition that this contract was made between the Board of Trade and the telegraph companies, is in conflict with the principles of the common law enunciated by the Courts, in that it is an unlawful restraint on traffic and illegal because of its necessary tendency to impose improper restraints upon trade.

And we assert that all of the authorities agree, even at common law, that it is sufficient if the contract tends in the direction of creating monopoly or restraining trade and to deprive the public of the advantages which flow from free competition.

The Act of Congress of July 2nd, 1890, was but declaratory in concrete form and providing specific remedies for what was already the common law upon the subject.

This proposition is discussed and approved in U. S. vs. E. C. Knight Company, 156 U. S. 1.

SECOND.

This case is different from the case decided by the United States Circuit Court at Cincinnati, Board of Trade vs. O'Dell Commission Company, 115 Fed. 574, in this, that in the O'Dell case the testimony showed that the defendant, O'Dell Commission Company, was engaged in bucket shopping, while in the case at bar there is no testimony showing, or tending to show, that the defend-

ants are engaged in bucket shopping or violating the Statutes of the State of Missouri or Illinois on that subject. In other words, for the purposes of this case, it is engaged in a legitimate grain business.

The bill of complaint, however, in this case is precisely as it was in the O'Dell case, and we assert that the bill of complaint in that case, as well as in this one, was founded upon the proposition and assumption that that complainant had a right to maintain its bill and had an equity resting upon the proposition that the defendants were bucket shopping, and but for that fact, they would have no equity.

The bill further proceeded to charge this proposition and expressly thereafter sets up that the defendants were engaged in the business of making contracts, agreements, trade and transactions in grain with reference to the public market quotations of prices made on boards of trade or exchanges and without bona fide transactions on boards of trade wherein both parties contemplate that the agreements, trades or transactions shall be closed or terminated when the market quotations or prices reach a certain figure, and that many persons were intending to use these quotations for gambling in the fluctuations of prices, and that bucket shops were using these quotations throughout the country and stating that such bucket shop transactions were contrary to the laws of the State of Illinois, and that when losses were incurred in bucket shops the customers erroneously believed that they had suffered from the dishonesty of the complainant, and that their good name, reputation and integrity had been disturbed, and that because of such bucket shopping they found it necessary to enter into the agreement set up, and that they adopted certain regulations to prevent the sale and distribution of the quotations to persons conducting so-called bucket shops, and then pleads the contract made between the telegraph company, and that they hoped that the defendants in this case would sign the contract not to use it for bucket shopping, etc., and then charges that if any person be permitted to have them they can furnish them to bucket shops throughout the country, and "Thus, entirely defeat the efforts of your orator to prevent their use in bucket shops as a

basis for their illegal bets, and destroy your orator's right to realize money from the sale of said quotations."

So that it will be seen that the bill is based upon and recognizes the proposition that their remedy, if any, must be predicated upon a theory which assumes the fact that defendants must be shown to be bucket shopping. This is the main and ultimate fact upon which the equity in the bill is based, and in looking at the agreement pleaded in the bill, it will be seen that the right of the telegraph company is complete and absolute to furnish the quotations to whomsoever it pleases, if the applicant signs the conditions, provided, however, that they are not given to bucket shops, and that proposition is found in Provision 2 of the agreements, which says:

"Second. Said parties of the second and third parts agree that they will not knowingly furnish or sell, directly or indirectly, said continuous quotations to any person, firm or corporation, conducting a bucket shop or other similar place where such quotations are used for a basis of bets or other illegal contracts based upon the fluctuations of the prices of commodities dealt in on said Board of Trade."

And then, as a means of carrying this out, the contract with the telegraph company and the Board of Trade, provides for an elaborate procedure by which every applicant shall sign a written application to the telegraph company wherein he agrees not to use them for such purposes, so that the contract entered into by the telegraph company and the Board of Trade was an absolute sale, for a consideration, of the right to use, on behalf of the telegraph company, and they had a right to let anybody have them that they pleased, except that they should not allow bucket shops to use them.

Now, it being conceded in this case that the defendants are not bucket shopping nor using the quotations for improper purpose, the only interest that the Board of Trade could possibly have, under the contract, has vanished, and it is conclusively shown not to exist. If the defendants are not conducting a bucket shop, and are not using the quotations in bucket shopping, as it must be conceded they are not, under this evidence, then the Board of Trade has no interest in the proposition: It is in no way brought

into discredit; it is in no way injured, and if it be true that the defendants are honest and for proper purposes surreptitiously obtaining from the telegraph company the quotations, the telegraph company is the only party who has any substantial or financial interest in the matter, and we again assert that the complainants, themselves, recognized this proposition, by elaborately setting out in the bill the fact that the defendants are bucket shopping and using the quotations for that purpose, and were thereby bringing the Board of Trade into disrepute in some way and depriving it of business by injuring its reputation in that it might be supposed that it, itself, was engaged in bucket shopping.

If the contract between the telegraph company and the Board of Trade was an absolute sale of the information, the Board of Trade could not be injured or have a remedy, even if the telegraph company had absolutely given the quotations away, and the telegraph company, under the contract, had the right, if it desired to do so, to give to every person in the United States, except bucket shops, if the contract signed by the applicants the free and unlimited use of the quotations without any compensation. There is nothing in the contract whatsoever that fixes any limit or price that the telegraph company shall fix for the information or quotations, and the telegraph company, under the contract, has the unlimited right to give them away if they want to, and the Board of Trade could not interfere against the telegraph company, if they did so, nor neither could they enjoin any parties that were receiving from the telegraph company, who did not pay for them, nor neither could they enjoin a party who receives them from the telegraph company without license or pay, as it cannot be shown, and is not shown, that the Board of Trade can, in any way, be financially affected thereby, or that it was a right that they ever had, and if this right existed so far as the telegraph company is concerned, the complainant cannot seek to enjoin a party who is doing a thing he has a right to do, as far as the telegraph company was concerned, simply because he did not sign a contract with the telegraph company. That is a matter purely for the telegraph company, unless the Board of Trade can be shown to have some substantial financial interest in the matter. In other

words, the only interest that the Board of Trade could possibly have would be to prevent them from being used for bucket shopping, and by showing that they were so used, and the only provision in the contract in reference to the limitation upon the telegraph company as to the free and unlimited use of the quotations as it pleases, is found in the following clause in the contract:

"But, if, within said time said party of the first part (Board of Trade) shall find upon investigation, and shall notify said telegraph company that said applicant wishes said quotations for any of said prohibited purposes, said telegraph company shall refuse to furnish said quotations upon said applications."

And this is the only qualification to the unlimited use of the quotations as the telegraph company pleases. And again we say they could send them broadcast throughout the country without pay of any kind, or permit parties to take them from their wires at any time, if they wanted to, and complainants would have no interest whatever in the matter as long as they were using them for proper and legitimate purposes.

It was suggested on the trial below, that the contract had provided that if legal proceedings should be commenced against the telegraph company on account of any delay in receiving quotations, or refusal to furnish them, and proceedings should be defended by the Board of Trade, who would pay all counsel and attorney fees, charges, damages, fines and penalties and expenses which the telegraph company may be put to, and that, if the Board of Trade should, at any time, ascertain that the quotations were being used for the purpose of conducting an illegal business of gambling in the commodities dealt in on the Board of Trade, or was conducting a bucket shop as defined by the laws of the State of Illinois, that they should inform the telegraph company, and that thereupon, the telegraph company should cease to furnish information to such parties, and that the Board of Trade would defend the action, or, that the Board of Trade might commence legal proceedings against such parties to enforce the contract and determine "whether such person, firm or corporation is using said quotations for such illegal purpose, or is using such quotations in conducting a bucket shop contrary to the terms of its business or

other agreement," etc., so that it will be seen that the right reserved to the Board of Trade is to interfere only when parties are using the quotations for illegal purposes. In other words, that agreement simply provides that after the contracts were entered into, if they were violated by parties using them for illegal purposes, that the Board of Trade might maintain an action, but this agreement was based upon two assumptions, first, that the contract must have been entered into by the alleged bucket shoppers, and, second, that they had violated the agreement by using the quotations in bucket shopping, or illegal purposes, after they had made a contract and received the quotations under it. This contractural right did not give the Board of Trade any authority whatever to interfere except where the parties were using the quotations in violation of law, and indeed, recognizes upon its face, that they had no interest in any other phase of the proposition, and could not have, after they had sold them to the telegraph company, without qualification, as to whether the telegraph company should charge for them or give them away, or permit other parties to use them without compensation. The only interest they were claiming to have, by the contract, was that they should not be used for bucket shopping, and if they were so used, and the telegraph company did not elect to stop them, that the Board of Trade itself might step in and bring action. So that we must insist now, that there is no equity whatever shown in this bill, and the facts do not exist upon which this bill can be maintained, and furthermore, that it is proven that it could have no remedy of any kind under the evidence in this case, unless the defendants were shown to be bucket shopping and violating the law and using the quotations for illegal purposes.

It was suggested, however, by counsel for the Board of Trade on the argument below, that it cost the Board of Trade a large amount of money to conduct the business of gathering the information, but this is no answer whatever. They sell the information to the telegraph company for thirty thousand dollars a year, and the question as to whether or not the Board of Trade spends one dollar or a thousand dollars in furnishing them to the telegraph company has nothing whatever to do with the proposition,

because, if the telegraph company has, as they do have under the agreement, the absolute right to give the quotations away to everybody in the United States, the Board of Trade's interest cannot be different because it costs them something to furnish them to the company. If they have sold them to the company, as by the contract they have, and the company has the right to do as they please with the quotations as long as they do not give them to bucket shops, how is it material what it costs the Board of Trade to carry out this contract with the telegraph company? But we assert that the evidence shows that the Board of Trade does not pay a cent nor expend a cent gathering this information. Its president, Mr. Warren, at pages 838 and 839 of the bound testimony, states:

Q. Does the Board of Trade pay out anything for those market reports at the present time? A. No, sir.

Q. How long since it has paid anything on account of market reports? A. In what way?

Q. Paid cash for gathering them? A. For gathering them?

Q. Yes. A. Since the 1st of August, 1900.

Q. Has the Board of Trade received anything from the Cleveland Telegraph Company on account of those market reports that the Cleveland Telegraph Company gathers? A. They have received by that means and the Cleveland Telegraph Company has paid these expenses for gathering them.

Q. Has the Board of Trade received more than that from the Cleveland Telegraph Company? A. I think they have.

Q. Do you think the Board of Trade has received, or did receive, during the year 1900, from the Cleveland Telegraph Company on account of the market reports, from August 1st to December 1st, the sum of $2,874.78? A. Between what dates?

Q. August 1st and December 1st? A. I couldn't testify to that, Mr. Jenks.

Q. Do you know that the Board of Trade has received cash from the Cleveland Telegraph Company? A. Yes, sir.

He then proceeds to state that Mr. Worthington, the assistant secretary, has control of the books in that particular.

Now let us turn to Mr. Worthington's testimony, and see what he tells us. On pages 863 and 864 of the Record, we find

the following questions and answers from Mr. Worthington, the assistant secretary. The volume of the report of the Board of Trade was handed to him, and under head of "Receipts from Cleveland Telegraph Company," there appeared an item of $2,874.78, and the following questions occurred:

Q. You will find another item there under the head of "Receipts from Cleveland Telegraph Company, August 1st, to December 1st, $2,874.78. Do you know what that amount is composed of? A. Composed of several payments made by the Cleveland Telegraph Company, showing their earnings.

Q. Showing its earnings? A. Earnings of the company.

Q. The telegraph company? A. Yes, sir.

Q. Did the Cleveland Telegraph Company pay that amount of money to the Board of Trade? A. Yes, sir.

Q. Was that for the privilege of gathering market reports on the floor of the exchange room? A. I presume it was.

Hence, we must insist that this bill must be dismissed for want of equity. The O'Dell case was retained by the Court for final decision only upon the theory that the defendant, the O'Dell Commission Company, was a bucket shop, and was using the quotations for bucket shop purposes, and that feature lacking in this evidence and upon which theory the bill was framed, it must follow that they have no standing whatever.

THREE.

But there is another reason in this cause which we urged and which, in our judgment, makes it unnecessary to consider the questions hereinafter discussed, and it is this, that there is no testimony whatever in the case showing, or from which the Court can even conjecture, that the defendants in this cause, use, post or exhibit the market quotations until after they have become public property in Kansas City. Let us see what the facts are in reference to this subject.

In the Record at pages 194 and 195 is found a stipulation. That stipulation reads as follows:

"It is stipulated that at the time of the filing of this bill, the defendant, the Christie Grain & Stock Company was, and ever since has been, posting in its office in Kansas City, the greater part of the continuous quotations collected upon complainant's exchange and transmitted to the telegraph companies, and it was also during said time, purchasing from the Western Union Telegraph Company, and posting the ten minute quotations of prices upon complainant's exchange. That said continuous quotations are furnished by the Western Union Telegraph Company to at least six different grain commission men in Kansas City without objection of complainant, and that such quotations are by said commission men, posted at once upon blackboards in their offices.

Defendant, however, claims that these continuous quotations posted by it, are not posted until first made public in Kansas City, which last proposition the complainant denies.

It is further agreed that during all the period above mentioned, said defendant, Christie Grain & Stock Company, has also been posting on its blackboard in its place of business, market quotations of prices made on the following exchanges: New York, Minneapolis, St. Louis, Kansas City, Milwaukee, Memphis, New Orleans, and also from Liverpool, London and other European markets.

The complainant reserves the right to show that such quotations of other markets are not the continuous quotations, but only occasional quotations of prices on such markets."

Now, we assert that the evidence conclusively shows that they are not posted by the defendants until after made public in Kansas City, and that complainant has not, under its reservation of rights, in any way shown that they are published or posted before they are made public in Kansas City.

Let us see, therefore, how this matter stands. Mr. Warren, president of the Board of Trade, at pages 841. and 851, of the bound testimony, states:

Q. Have you any idea of the length of time that elapses between the sending of the report from the floor of the exchange room of the Board of Trade, and the receipt of those reports at the other end of the wires at St. Louis, Minneapolis, Kansas City, San Francisco and New York? A. I know it is very brief.

Q. Do you know that those reports, when received at those various cities, especially in the city of Chicago, in Cleveland, in Cincinnati, St. Louis and Kansas City, are immediately posted

on blackboards in different offices in those cities? A. I have been so informed.

Q. And you believe it to be true? A. Yes, sir.

The complainant put upon the stand, Mr. Crawford, who, on page 249 of the Record, testified as follows:

Q. Were there any customers receiving these quotations from the Cleveland Telegraph Company at and prior to the time of the filing of this bill, who had not first signed one or the other of these two forms of contract? A. No, sir.

And on page 251 of the Record, the following question as to the Milwaukee Company:

Q. Now, prior to the time of the filing of the bill in this case, did the Milwaukee Telegraph Company furnish these quotations to any person, firm or corporation, who or which had not first signed a contract in one or the other of those forms? A. No, sir.

Complainant then put upon the stand James F. Morgan, chief clerk of the Western Union Telegraph Company, who states, on page 300 of the Record, that since the first day of August, 1900, their company has required all parties getting the continuous quotations to sign an application stating the use to be made of the quotations. He states that no parties are getting the quotations who have not signed the contracts, and that they are giving them to no parties who have not signed it; and that they are not furnishing them to any parties except those who signed the contract.

They then put upon the stand, William E. Griffitts, and who testifies that he has "charge of the distribution of the Postal Telegraph Company. He testified, on page 323 of Record, that no person got the quotations who had not signed the application set out in the contract.

Mr. C. C. Christie, on pages 529 to 532 of the Record, testifies:

Q. How many places in Kansas City do you know of, where the continuous market reports from the Board of Trade of the city of Chicago, have been received from day to day, for the past, say ten years? A. Oh, the number varied; I suppose the average ticker subscriber in Kansas City to the Chicago Board of

Trade quotations for ten years, would amount to twenty-five, possibly.

Q. How was it on the 9th of June, 1901, and for months prior thereto? A. Up to some date this summer or this spring. . .

Then on page 306 the following:

Q. Now, is there and has there been for years any other was of receiving market reports than through the ticker service? A. Oh, yes.

Q. What is that? A. People send them over public wires and over private wires.

Q. And they are received by means of a Morse telegraph instrument? A. Yes, sir; I suppose they are.

Q. How many people in Kansas City were in receipt of the continuous market reports by wire, telegraph wire, on the 9th of June of this year and for months prior thereto? A. Well, possibly eight.

Q. Who were those people that were allowed to receive the market reports on and prior to the 9th day of June of this year? A. They were brokers for Chicago Board of Trade houses.

Q. Go on. A. Those were the only people that were allowed to receive them.

Q. How about the Kansas City Board of Trade? A. Well, the Kansas City Board of Trade didn't get them; they posted the Minneapolis market for nearly a year, and did not again have the Chicago market until after this contract with the telegraph company. . . . . .

Then on pages 307 and 308, the following:

Q. In what manner, after the receipt of these market reports by wire, have the reports been treated in different offices, for the past number of years, say for ten; I speak with reference to blackboards more than anything else. A. They have been spread upon blackboards and made public just as soon as they were received over the wires; they were spread upon a blackboard on the Kansas City Board of Trade, taken from a sounder, Morse instrument.

Q. In what other places have they been spread upon a blackboard? A. In all these brokers' offices, the Board of Trade

brokers' offices. The Chicago Board of Trade brokers' offices say they did.

Q. And other places throughout the country? A. Yes, sir.

Continuing on pages 308 and 309, the following:

Q. Mr. Christie, for how long a time, to your own knowledge, have the market reports from the Chicago Board of Trade been spread upon blackboards in different offices? A. Just as long as I have been familiar with the business, twenty years. . .

And upon cross-examination, at page 565 of the Record, Mr. Christie states how he does get the quotations, showing conclusively that he has not gotten them except through a public source.

Q. How are you getting the quotations? A. All sorts of ways.

Q. Well, describe them. A. Over the telephone, by messenger boys, by personal observation, by wire sometimes.

Therefore, we contend, upon this proposition, that the situation is this: They have alleged in their bill that the defendants were using the continuous quotations of the Board of Trade as they were sent out. The answer under oath denies this. The burden rests upon the complainant to establish it. It is a material question in the case, and unless established, there is no case here.

In order to sustain their bill it is absolutely essential that they should show that we use their immediate continuous quotations. They have entirely failed on this proposition. They put the operators of the telegraph companies on the stand and they all show that we are not getting the quotations, and Mr. Warren himself testifies that nobody is getting them who has not signed these contracts. And it being admitted that we have not signed them, it is therefore proven that we are not using them at all, and we therefore assert that we are not using them at all until after they become public, and we charge that there is no evidence that we are using the continuous market reports at all until made public, although we do contend for the right to do so, but, at least, it can be clearly asserted under the testimony, that there is no evidence that we are using them until they are posted and made public in the various brokers' offices in Kansas City and by the Board of Trade of Kansas City, and if we use them thereafter, it cannot

be contended that we are using them at a time when they are not public property subject to the inspection of anybody and everybody that visits the public places described in the testimony. For this reason they have failed in their proof.

FOURTH.

But if the Court shall be of the opinion that the pleadings present any question for decision under the evidence, as it now stands, we desire to discuss another important question arising on the bill, and that is, that the contract made between the telegraph company and the board of Trade is *ultra vires*, against public policy, and void upon its face, for two reasons, first, that the market quotations are public property, and a property interest which is quasi-public in its nature, and not the subject of sale or barter of any kind, between the Board of Trade and the telegraph companies, and being impressed with the public interest, neither the Board of Trade nor the telegraph companies can contract with reference to the right of the public to it.

Second. That even if the first proposition were untrue, the common carriers, to-wit, the telegraph companies, cannot discriminate as to who shall and who shall not receive the market quotations brought into the State of Missouri over the public facilities as long as they are distributing them to the public generally, and that as long as the defendants are not engaged in bucket shopping under the evidence, they are entitled to the quotations by paying reasonable charges therefor, such as are paid by other parties generally, and that the telegraph companies cannot refuse to deliver information that is public to the balance of the community, because it has made a contract with the Board of Trade to not give them to bucket shops, and when the Court finds, as a matter of law that the defendants are not a bucket shop, they are entitled to use the quotations, notwithstanding they may not have signed some contract satisfactory to the Board of Trade.

PUBLIC PROPERTY QUESTION.

One of the main contentions in this case which we made below, and now desire to urge upon this Court's attention, is that the continuous market quotations are of such a character, brought into existence under such circumstances, and distributed throughout the country under such circumstances, and for so many years, that they have become impressed with the public right and are part of the community property of the country at large, and are not the subject of barter or sale by the Board of Trade and the telegraph companies, nor such as the telegraph companies can buy from the Board of Trade and convert to their own use against the public at large, other than the right, on their behalf, to establish a reasonable charge and furnish them to all the public alike, upon the payment of such reasonable charges.

This question was set at rest in an exhaustive opinion of the Supreme Court of Illinois where this corporation has its home.

New York and Chicago Grain and Stock Exchange v. Board of Trade of Chicago, 127 Ill., 153.

The Court's attention is directed to this case, not only upon the legal propositions involved, but also for the reason that it is a most correct statement of how these market quotations have been sent out for the last thirty years, and is practically, in its facts, a re-statement of what the evidence in this case has shown. That case holds that the Board of Trade with reference to these market reports has so conducted itself in reference to the same, that they have become clothed with the public interest and have been used in a manner to make them of peculiar consequence and to affect the community at large, and adopts the maxim and well known proposition that when one devotes his property to use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created, and holds that as long as the Board of Trade continues in the business of collecting and furnishing to the pub-

lic market quotations, whether it does it directly or indirectly, it must do so without unjust discrimination as to persons, and must furnish market quotations to all who may desire to obtain them for lawful purposes and upon the same terms. And that case, upon the vital propositions involved, was but following the celebrated case 94 U. S. 113 Munn v. People of Illinois.

While it is true that the Munn case was based upon the consideration of an act of the legislature fixing maximum price for charges for the storage of grain in warehouses, and that the legislature might control the same because of the quasi-public nature of the warehouse business, the decision was not founded alone upon the proposition that it was legislative and could not be controlled by the courts without legislation, and proceeds upon the theory that while the legislature may control a matter in the interests of the public, that that inherent right also rested in the court, and does rest in it, independent of the act of the legislature, and they say, among other things, in that decision:

> "The property does become clothed with public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."

And again they state from Lord Ellenborough's decision:

> "There is no doubt that the general principle is favored both in law and justice, that every man may fix what price he pleases upon his own property, or the use of it; but, if for a particular purpose the public have a right to resort to his premises and make use of them, and he have a monopoly in them for that purpose, if he will take the benefit of that monopoly, he must, as an equivalent, perform the duty attached to it on reasonable terms."

The Munn case proceeded upon the theory that the warehouse business was one of recent origin and that its growth had been rapid, and it was a business in which the whole public had a

direct and positive interest, and that the legislative act regulating the charges was only a matter of regulating that which was already public, and that the statute was simply extending the law so as to meet the new development of commercial progress, and in that case they again say:

> "So, too, in matters which do affect the public interest and as to which legislative control may be exercised, if there are no statutory regulations upon the subjects, the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied."

We also call attention of the Court to the following case upon the same line:

50 Fed. 677., *Del. Tel. Co. v. Delaware.*

This was a decision by the United States Circuit Court of Appeals. In that case it appeared that the Postal Telegraph Company owned a telegraph system with lines extending throughout the country, having its principal office in Wilmington, Delaware, and that the Delaware Telephone Company owned a telephone exchange in the same city, and furnished telephone facilities to its customers, and one of its customers was the Western Union Telegraph Company, and the Postal Telegraph Company desired to also become a subscriber and enjoy the public privilege, which was refused it, and it applied to the Court for relief. And the Court said, among other things, that the telephone companies were engaged in public employment and while they were not required to extend their facilities beyond the reasonable limits they might prescribe for themselves, yet, they could not discriminate as to the class of individuals they would serve, and that if the telephone company had confined the use of its facilities to the carriage of personal messages for individuals and had excluded other telegraph companies, and others who were engaged in forwarding messages, the relator would probably have no ground for complaint; but, inasmuch as it did not do so, and had extended the privilege to the Western Union Telegraph Company, it must afford the same privilege to the Postal Telegraph Company. That the admission

of the Western Union Telegraph Company was its voluntary act, that having once accorded this right, it stood open to the public, and they said in that case, that the fact that the telephone company may have been prohibited by its patent right contracts from allowing telegraph companies to connect, was no answer, as it may be said in this case, that it is no answer to say that the Board of Trade has made a contract with the telegraph company to limit the people's rights, because they were not bound to make any such contracts nor enter into such contract, and the Court in the case cited took pains to again assert the proposition that those engaged in public employment in which the public was interested, were subject to control by the courts.

A similar question was before Judge Brewer while upon the circuit bench in the case

23 Fed. 539, *State of Missouri v. Bell Telephone Co.*

This was an application by the Baltimore and Ohio Telegraph Company to compel the Bell Telephone Company to permit the telegraph communication between it and the Baltimore and Ohio.

The defendant contended that it was operating under a license from the American Bell Telephone Company, and by the terms of its license could not establish telephone communication with telegraph companies, and it further appeared, however, that they granted to the Western Union Telegraph Company the privilege of communication. And Judge Brewer said, in passing upon the question whether they could compel the Bell Telephone Company to allow the Baltimore and Ohio to connect with it on like terms, among other things, the following:

> "I believe fully in the sacredness of property, but I think all property stands upon an equal basis, whether the property consists of gold dollars in your pocket, real estate or the ownership of a patent. There is no peculiar sanctity hovering over or attaching to the ownership of a patent. It is simply a property right, to be protected as such. Starting from that as a basis, while every property owner may determine for himself to what he will devote his property, yet the moment he puts that property into what I perhaps may, for lack of a better expression, define as the channels of commerce, that moment he subjects the property to the laws which control

commercial transactions; just as in the warehouse cases (Munn v. State of Illinois), in which that Court held that when an individual built a warehouse, and put his property into that kind of business, he subjected the property thus placed to the laws which controlled the transactions of commerce, involved in which was the power of the public, through the legislature, to regulate rates. No man holding property was bound to build a warehouse, or bound to put his property into that particular channel, but the moment he did so, he put it where the legislature could say, 'You may charge so much and no more, for the transaction of this business.' He put his property into the channels of commerce—as multitudes are doing—into the railroad business, into the express business and into other channels of commerce. Whenever the property is put into those channels, it is put within the power of the public, speaking through its legislature, or the power of the Court enunciating general rules operative upon such transactions, to modify leases, to modify licenses, control duties. So, notwithstanding this licenser has given to the licensee the right to establish a telephonic system in the city of St. Louis, with telephonic communication with only certain prescribed telegraph systems, the moment it permitted the establishment of a telephonic system here, that moment it put such telephonic system within the control of the State of Missouri, and the control of the courts, enforcing the obligations of a common carrier.

"A telephonic system is simply a system for the transmission of intelligence and news. It is, perhaps, in a limited sense, and yet in a strict sense, a common carrier. It must be equal in its dealings with all. It may not say to the lawyers of St. Louis, 'my license is to establish a telephonic system open to the doctors and the merchants, but shutting out you gentlemen of the bar.' The moment it establishes a telephonic system here, it is bound to deal equally with all citizens in every department of business; and the moment it opened its telephonic system to one telegraph company, that moment it put itself in a position where it was bound to open its system to any other telegraph company tendering equal pay for equal service.

"So my conclusion is, that notwithstanding the terms of this license, which seems to inhibit it from dealing or giving its telephonic privileges to any other telegraph company

than the Western Union, the moment it established its telephonic system here, that moment it compelled itself to respond to the demands of any telegraph company, or any individual in the city tendering to it equal pay for equal privileges."

This same principle was applied also in the following cases:

36 Ohio st. 296, *State of Ohio v. Bell Tel. Co.*

17 Neb. 126, *State v. Neb. Tel. Co.*

118 Ind. 194, *Central Tel. v. Falley.*

67 S. W. 684, *State ex rel v. Kinlock* (recent case).

The Supreme Court of the United States in the Munn case, the United States Circuit Court of Appeals in the Delaware case, and Judge Brewer's circuit decisions in the Bell Telephone case, are, in our judgment, the federal views applicable to this question; and the views of the state courts of Illinois are well settled by the 127th, which has never been criticised or departed from.

Counsel for the Board of Trade on trial of the trial below, undertook to make some suggestions to the effect that while a private interest might be a public one, yet the courts could not act until the legislature had stepped in, but the Munns ease and all the cases above cited, show that is not true; that all public property is subject to control by the courts and not alone by the legislature, but the right of the legislature to act at all is predicated upon the first proposition, that the public right has already existed so far as the courts are concerned, and the Supreme Court of the United States in a recent decision by Judge Brewer,

Western Union Telegraph Co., v. Call Pub. Co., 181 U. S., 92; (21st S. C. Rep., 561).

has held that the principles of the common law are operative upon all commercial transactions except as far as they are modified by enactments, and that there is no federal common law different and distinct from the common law existing in the several states. Among other things they there say:

"But it is an entirely different thing to hold that there is no common law in force generally throughout the United States, and that the countless multitude of interstate com-

mercial transactions are subject to no rules and burdened by no restrictions other than those expressed on the statutes of Congress.

"The common law includes those principles, usages and rules of action applicable to the government and security of person and property, which do not rest for their authority upon any positive declaration of the will of the legislature."

The decision of Judge Tooley, one of the local judges in Chicago, in pamphlet form, is handed in with this brief, on this same line, and which we commend for clearness, and as a correct position.

We also file herewith a printed copy of the decision of Judge Henry, of the local court of Kansas City, in a case some time ago decided, where an injunction was asked against the telegraph companies, which was a decision upon substantially the very facts that there are in evidence here, so far as the contention of complainant is concerned; and it appearing in evidence here that the telegraph companies are bringing these public market quotations into this State and to Kansas City, and permitting others to have them, we insist that they cannot discriminate as against these defendants, and refuse to allow them to receive them, even though they were a bucket shop, but especially so, when it is not shown that they are bucket shopping, but that they occupy the same position as other citizens of the State as to receiving them.

The question as to how long these market quotations have been sent throughout the country, and of the character and nature and circumstances under which same have been vested in and given to the public, is particularly shown in the testimony of Mr. Christie, Mr. Warren, Mr. Whitcomb, Mr. Behl, Mr. Whitford, and Mr. Boyd on the following pages of the Record: As to Mr. Christie, pages 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532; and to Mr. Warren's testimony on bottom of pages 841 and 951; and to Mr. Whitcomb's testimony showing that market reports have been sent out since 1873, on pages 904 to 908; and Mr. Behl's testimony at pages 909 and 910; and Mr. Whitford's testimony on pages 915 and 916; Mr. French, page 369.

We were able to trace back as to the time for commencing the

sending out of these quotations as far as 1870. Prior to this time it was impossible to get any record, as the telegraph company's papers were destroyed by the Chicago fire; but Mr. Edward Whitford was put upon the stand, and his testimony, commencing at page 915, alone would be sufficient to settle the matter. He stated that he was first employed as an operator for the Western Union Company in 1868, and remained with the company until 1884, and that the Western Union Telegraph Company first commenced sending out these continuous market reports from the Board of Trade about 1870.

Q. (Page 916.) How long to your knowledge, did the Western Union Company continue to send out market reports, the continuous market reports from the Board of Trade of the city of Chicago? A. I don't think they have ever stopped. They have been ordered to stop, but by injunction, have continued, through the influence of injunctions.

He then stated, on cross-examination, that prior to the time the Western Union sent them out, that the Morse Bros. had been sending out these quotations; they had been doing so prior to the time of the fire.

The testimony of Mr. Christie, who has been in the grain business, as long, almost, as anybody in the country, should be consulted on this point. On page 522 of the Record, the following occurs:

Q. Do you know for how long a time on the floor of the exchange room of the Board of Trade the reports of transactions there at the pits have been gathered and sent out to the public? A. It dates back farther than my experience.

Q. And your experience extends back how many years? A. To 1880.

Q. Do you know by whom, when your experience commenced, the reports were gathered and sent out? A. No, sir.

Q. At the first of your experience, to whom were those market reports sent? A. Any one who would pay for them.

Q. And they were sent and distributed? A. Yes, sir.

Q. And pay received by whom, in your first experience? A. By the telegraph company.

Q. What telegraph company? A. The Western Union.

And on page 523:

Q. For how long a time, in your experience, have continuous market reports been sent out over the wires and distributed among the people, to any people who would pay for them? A. You mean at various times?

Q. Yes, take it all the time? A. Well, with the exception of the last year, year and a half, is it?—and a period following 1890 pretty close, and another period of about 1886, I have no recollection of any time when the Western Union did not furnish them to everybody.

Q. Who wanted them? A. Yes, sir.

Q. What effect, if any, had the sending out and receipts of these market reports from the Chicago Board of Trade upon the business of the country, especially in the West, in commodities that are dealt in on the Chicago Board of Trade? A. The whole market price of the West is made by the fluctuations of grain on the Chicago Board of Trade, for future delivery.

Q. And what has that to do with the transaction of business in the country in the same commodities? A. Nearly every purchase and sale of grain in the West, the Northwest and the Southwest, is made and based on the price of that property in Chicago each day and from hour to hour.

Q. What will you say as to the effect of sending out these market reports to the public continuously for a great number of years upon the ability of any person in the country to deal in the same commodities without knowing what the market prices are in Chicago? A. It would be almost impossible to do any business in the country without knowing the Chicago market.

And on page 524:

Q. Mr. Christie, has the business of the country generally, in commodities dealt in on the Chicago Board of Trade, been at all affected by the fact that for a great many years last past continuous market reports have been sent out to the public generally? A. Yes, sir.

Q. To what extent? A. Why, to such an extent that the grain markets of the United States and the Southwest have been

absolutely made and controlled by the prevailing prices in Chicago, both on and off the various boards of trade located west and southwest of Chicago. The price of wheat in Kansas City goes up and down as the price of wheat in Chicago goes up and down, and the same is true in St. Louis, and the same is true in Minneapolis. . . . . .

We therefore urge, under the undisputed facts in this cause, and under the law, as declared by the various authorities cited, that it must be held that the market quotations are impressed with the public right, and that the Board of Trade cannot deprive the public of that right, nor can the telegraph companies be permitted to enter into contracts, which are but subterfuges or frauds, to evade the law upon that subject; and that the public market quotations, being a property interest which affects the public, and in which the public have acquired a right and interest which cannot be taken away from them, that they cannot be enjoined from the free and untrammeled use of them. As far as the testimony in this case shows, the defendants, even if using the quotations immediately as received by the other firms and the public in Kansas City, cannot be enjoined from using that which belongs to the public, and which, when put upon the public telegraph wires of the country and brought into the State, are public; and, upon this question, we think there can be no room for doubt, and that, hence, it must be held that there is no equity in the bill, and that any claimed right predicated upon a contract made and entered into between the Board of Trade and the telegraph companies is wholly beyond their power or right, and they cannot contract away the public interest and right in such quotations.

The modern trend of the commercial and industrial affairs of our country is bringing about and presenting constantly before the courts, new and important considerations. This public question, in its infancy, was largely confined to railroads and other carriers, but in the modern days of centralization of capital and the concentration of great business interests, and their gradual control, or attempt to control, the subjects of commerce, including almost everything in the line of provisions, fuel, transportation and all that goes to make up the necessary things for the

feeding, clothing and caring for the people of a nation, puts to the front important considerations to be handled by the courts; but we insist, while these new conditions are constantly arising and large and extensive confederated power is to be dealt with in its dealings with the public, yet no new principles of law are to be applied; it is simply the old principles, fundamental in the history of civilization, enlarged and applied to meet the new conditions. While these great questions, growing out of the control of great facilities and centralization of the country's interests and industries in the hands of power, in attempts to foster monopolies and cut off competition, are presenting situations more or less alarming to the public interest and the public good, and to some extent, having a tendency to affect the life of the people, the courts in the broad application of well known and ancient, sound principles of public policy, necessarily and does keep pace with the conditions.

There never has been a time, and we trust there never will be, when the principles of law and equity administered by the courts shall have become narrowed or restricted, so as to be unable to reach out the fostering hand of protection and control any matter or subject vital to the life of the public at large. And the case at bar, in our judgment, must be controlled and decided in line with the old principles restated by the authorities heretofore cited, "that when one devotes his property to a use in which the public has an interest, he in effect, grants to the public an interest in that use, and must submit to be controlled by the public to the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use, he must submit to a reasonable control.

FIFTH.

Another point we urge upon the Court, appearing from the facts in this case, is this: That it being admitted that the defendants are not violating the law or engaged in bucket shopping, and it appearing that the only parties that the Board of Trade desire to prohibit from receiving the market quotations are bucket shops,

or parties that use them illegally, and that the only limitation that they desire to place upon telegraph companies as to the free and untrammeled use thereof, was that they should not go to bucket shops, we assert that there is no equity here whatever, for this particular reason; under the contract, if legal, the telegraph companies had a right to sell them to anybody, or even give them to anybody, provided they were not bucket shops, and the only object of requiring the applicant to sign an application was simply to find out whether they were bucket shops, and to make them agree that they would not use the quotations in bucket shopping, and the evidence in this case showing that the defendants are not bucket shopping, the complainants could have no standing in equity, because they are such parties, as by the spirit of the contract, would be entitled to quotations anyhow, and if they are such parties as would be entitled to them, even admitting the contract to be good, the telegraph company not complaining, no damage nor hurt is done so far as the Board of Trade is concerned, and the Court cannot certainly say that if these parties are such parties as were entitled to receive the quotations, that they will be enjoined from using them because they do not sign a contract saying that they were not doing what the evidence shows they are not doing, to-wit, not conducting a bucket shop. In this state of the case, how can there be any equity here to enforce in favor of the Board of Trade? For it is apparent, that unless the defendants are bucket shops, the Board of Trade has no pecuniary interest in the subject at all, having sold their continuous quotations to the telegraph companies, with the right in the telegraph companies, to do as they please with them, and to give them away, without compensation, if they want to, and to allow parties to use them without their consent, if they want to, so far as the Board of Trade is concerned; and the Board of Trade could only have been damaged upon one theory, and can only have an interest upon one theory, and that is, upon the theory that the quotations were being improperly used under the terms and rights they reserve to themselves under the contract, and such not existing, under the evidence in this cause, they are out of the contest entirely, and the Court will not enjoin at the suit of the board, parties who would

have been entitled to the quotations, simply because they have not signed a contract to not use them for gambling purposes when the evidence shows that they are not using them for any such purpose.

SIXTH.

UNCLEAN HANDS PROPOSITION.

If the Court, after his consideration of all the previous questions, shall get to the consideration of this proposition, then, we say that the complainants must be turned out of court, for the reason that they came into a court of equity with "unclean hands," and that grows out of this suggestion: They are here asking that we may be enjoined from the use of their continuous market quotations. We answer that the complainants have no standing for the reason that these continuous market quotations are made by the complainant in a place kept and maintained by it, for the purpose of making them, and where it knows that they are being made, and that it aids in their making, and permits them to be sent out after they are made, knowing that they are made and created as a result of transactions which violate the laws of the State of Illinois and the State of Missouri; the statute of the State of Illinois upon that subject being as follows:

"That it shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept within this state, any bucket shop, office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased, or to deliver the same if sold; and the keeping of all such places is hereby prohibited. Any corporation or person, whether acting individually or as a member of, or as an officer, agent or employe of any corporation, association or co-partnership,

who shall be guilty of violating this section, shall, upon conviction thereof, be fined in any sum not less than $200.00 and not more than $500.00; and any person or persons who shall be guilty of a second offense, under this statute, in addition to the penalty above described, shall upon conviction, be imprisoned in the county jail for the period of six months, and if a corporation, shall be liable to forfeiture of its charter. And the continuance of such establishment after first conviction shall be deemed a second offense.

"It shall not be necessary, in order to commit the offense defined in Section 1 of this Act, that both the buyer and seller shall agree to do any of the acts therein prohibited, but the same crime shall be complete against any corporation, association, co-partnership or person thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display, in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall be deemed an accessory, and, upon conviction thereof, shall be fined and punished the same as the principal, and as provided in Section 1 of this Act."

And the statute of the State of Missouri upon the same subject being as follows:

"Sec. 2223. It shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept in this state any office, store or other place wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other commodities, either on margins or otherwise, without any intention of receiving and paying for the property so bought or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins, when the party selling the same or offering to sell the same does not have the property on hand to deliver upon any such sale; or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased or to deliver the same if sold; and the keeping of all such places is hereby prohibited. And any person, whether acting individually or as a member or as an officer, agent or employe of any corporation, association or co-partnership, who shall be guilty of violating this section, shall, upon conviction thereof, be fined in

any sum not less than five hundred dollars, and not more than fifteen hundred dollars, and any person or persons who shall be guilty of a second offense under this section, in addition to the penalty above described, shall, upon conviction, be imprisoned in the county jail for the period of not less than six months and not more than twelve months."

"Sec. 2224. All purchases and sales or contracts and agreements for the purchase and sale of any of the property aforesaid, in manner aforesaid, as well as all transactions in stocks and bonds, petroleum, cotton, grains and provisions in the manner aforesaid, on margins, for future or optional delivery, are hereby declared gambling and criminal acts, whether the person buying or selling or offering to buy or sell, acts for himself or as an agent or broker for any firm, company, corporation, association or broker's office; and any person who shall be guilty of violating this section, upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars for each offense."

"Sec. 2225. It shall not be necessary, in order to commit the offense defined in the preceding section, that both the buyer and the seller shall agree to do any of the acts herein prohibited, but the said crime shall be complete against any corporation, association, co-partnership or person thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display in any manner, any such offer to buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall, for each such offense, be deemed and held to be an accessory thereto, and, upon conviction thereof, shall be fined the same as the principal; and any such corporation, association, co-partnership or person permitting any such communication, reception, exhibit or display, shall, for every such offense, forfeit the sum of five hundred dollars, to be collected in a civil action instituted by the prosecuting attorney of the city or county wherein such offense occurs or is permitted to occur."

The evidence upon the question of the complainant's transaction in this regard, their manner of doing it, and the result thereof, has been clearly set forth in the opinion of Judge Thompson in the O'Dell case, 115 Fed., 574, and which opinion, we think,

disposes of the question we now desire to discuss, if followed by this Court. The Record in the O'Dell case is the same Record presented in this case. But, we ask now again, to re-present the question to your honor as if one of first impression, believing, that independent of the fact that any other United States Court ever decided the question, that this Court would irresistibly be led to the same conclusion, even if a question of first impression.

WHAT ARE THE CONTINUOUS MARKET QUOTATIONS?

So that there may be no misunderstanding to start with, we desire to state that the Board of Trade of Chicago maintains an exchange hall and the pits wherein is carried on the business of selling for future delivery, and maintains, at a large expense, a clearing house for the clearing of these contracts and transactions all under the rules and regulations of the Board of Trade. These continuous market quotations—and which constitute the market quotations which it is sought to prevent the defendants from using—are not, and never were, the market prices or quotations of the sale of anything for cash or immediate delivery. These are the quotations made in the pits; these quotations consist of a result growing out of the fact that members of the Board of Trade congregate in this pit and there make offers to sell a commodity to be delivered in the future, or offers for acceptances to buy grain or articles to be delivered in the future, and never for the sale of anything to be delivered except in the future. In other words, no cash transactions, or actual present completed sales resulting in immediate delivery ever take place within the pits, and the market quotations which are sent out are simply the result of this talk that takes place between the various parties in the pits as to what they offer to do in the future, and acceptances of those offers. This constitutes the market quotations involved in the suit.

In proof of this proposition we invite your attention to the testimony of Mr. Warren, president of the Board of Trade, at pages 839 and 840 of the Record:

Q. In gathering the reports at the pits, are the changes in price of a commodity noted and sent over the country without reference to the kind of deal that is made there at the pit? A. Every change of price is recorded so far as possible.

Q. Whether that deal is a scalping deal, a hedging deal, a deal in futures, or any other kind? A. Yes, sir.

Q. Whenever there is a change in the market that is sent out? A. Yes, sir.

And Mr. Hough, on page 461 of the Record, states as follows:

Q. What sort of transactions are conducted at the pits in the exchange room? A. What sort of transactions?

Q. Yes, are they for cash and immediate delivery, or are they for future delivery? A. Future option, future delivery, of course.

Q. What do you mean by future option? A. Well, trading now in the month of May, that would be an option; the month of January would be an option; the month of December would be an option.

And Mr. Watson, page 433 Record, says:

"They don't do any cash business in the pits, but it is all futures, and that 400 or 500 men make up the number in the pits, dealing in this future speculative business."

And Mr. Crawford, superintendent of the Cleveland Telegraph Company, states on page 326 of the Record, testifies as follows:

Q. They put down on the slip every transaction that is made there at which a price is fixed by one man offering to sell and another man offering to buy—is that it? A. If there is a change in the price, yes. There may be a great many transactions at a given price.

In speaking of the sales at the pits, he says, on page 263, as follows:

A. If you are talking about pits, then I think it is very seldom —it might be that there are transactions made that are not in futures in the pits, but I should think it very seldom. If they were made I should think our reporter there would hardly catch it.

Q. You don't know of any ever having been made there, do

you? A. No, not right in the trading—not right in the pit; no, what I mean by the pit. I don't know whether you know what I mean or not, by the pit.

Again, on page 264, he says:

Q. Now, in those places, do they offer to do anything or does the other man accept the offer except in transactions for the future? A. I think I have answered that, I say I don't think they do very often.

Mr. Watson, page 437 Record, says that, "The quotations in the pit, resulting from these ring deals upon which differences only are settled, constitute a large part of the market quotations sent out."

But, if there had been no oral testimony upon the subject at all, we find that the rules of the Chicago Board of Trade, which are in evidence and which were in force at the time this suit was instituted, and known as section 22, page 17, of the rules in force June 19, 1901, filed as an exhibit in this case and introduced in evidence the following:

"No member shall quote by public or private wire, or otherwise, any price except such as is the first for the commodity immediately following the time indicated on the tape or such as is thus posted on such blackboard. *No member shall be permitted to use prices made in actual transactions as quotations* or give the same to any person other than the one making the trade."

So that it is true that by the rules of the Board of Trade itself it recognizes that the quotations in the pit were not actual sales, and that it was not engaged in the business of actual transactions, and that it was not sending out quotations of actual transactions, but were simply sending out quotations of bets on the future, and by that rule it inflicted a punishment of suspension upon any member who should send out the price of any actual transaction as a quotation, for the obvious reason that the quotations were not made up of actual transactions, but were simply bets on the future, and it is obvious that actual transactions, to-wit: actual sales or trades, would be at different prices as a matter of course, from those constituting the quotations sent out, and therefore, the Board did not desire to have the actual cash transactions mixed up with

bets on future quotations, and by its own rule recognized that it had two kinds of transactions, one that was actual, and the other that was a mere quotation upon something that was to happen in the future.

Counsel stated on the argument below, that they had repealed this rule since this suit was brought, and it is true that they have, by a new edition of the rules out December 16, 1901, evidently printed complete in order to leave out that proposition; but, it was in force at the time of the filing of this bill.

NATURE OF THE QUOTATIONS.

This future dealing in bets is made up of different types of transactions. They are designated as "stop orders," "hedges," "rings," "transfer trades," "spreads," "direct settlements" and "scalping."

The following named gentlemen, at the following pages, will inform your honor what "stop orders" are:

C. D. French, pages 362 and 363 of the Record; Mr. Kinney, pages 384 to 387; Robert Nye, pages 400 to 401; Mr. Christie, page 521; Mr. Watson, pages 427 to 428 Record; Mr. Crosby, page 728 Record.

The result of the whole evidence is that a "stop order" is an order sent in by a customer from the country or by any other party, going to the broker and giving him an order, for instance, to buy wheat at a certain price, and if it goes against the dealer and he loses, to stop his loss at a certain sum; and this "stop order" may be given at the same time the order is, or afterward; as stated by Mr. French that if a party wants to limit his profit he would simply say, "I don't want to lose any more than so much, a cent a bushel, two cents a bushel, on that wheat, and you must stop the loss there if it declines," and he sends to the Chicago house a "stop loss" order. He would just say, "stop that 20, 10, 40, 50 or 100,000 bushels of May wheat at a certain price," which was an order to stop it at that price and not stay with it any longer, but to sell it out. For instance, if the party issuing the "stop order" was a holder of 100,000

bushels of May wheat and he wished to place the stop at two cents below, he would simply state to stop the decline on 100,000 bushels of May wheat at a certain price, at two cents, or whatever it was; that, on the Board of Trade, if the market declined at that point, the deal was closed out, and they rendered an account of sales; and the loss would be the difference between the purchase and the selling price.

Now, this is an illustration of what the "stop order" business is, and it is shown by the testimony to be very large and extensive in the pits. The parties never intend, and of necessity, cannot intend to take or receive anything under the execution of these "stop orders," for the speculative brokers in the pit are informed before they go in that they are buying or selling simply to speculate on the differences, and that the party does not intend deliveries, because he gives an order to close it out at a certain loss.

These transactions constitute a part of the market quotations that are sent out as market quotations throughout the country.

Mr. Christie, at page 521 Record, gives similar explanation: That the brokers would go into the pit and sell the quantity of wheat or grain and report that he sold so much on "stop orders."

These "stop order" dealings make up a part of the market quotations.

HEDGES.

This hedging business constitutes a very large part of the dealings in the pits. It is not contended by the counsel for the Board of Trade that there are any deliveries in those kinds of transactions among what is known as the speculative class, but that those hedges are resorted to by men who buy the actual commodity in the country. As a matter of fact it is defined by the witnesses to be a system by which the party who buys the grain in the country and then goes into the pit through his broker in Chicago and sells an equal quantity of the same stuff for some future delivery month, not with the idea that the stuff is to be delivered on the sale, but with the idea that it will protect him in

case the price goes against him as to the actual commodity, and thus save his loss. We contend under the testimony that this is the rankest character of gambling, and of all other classes of dealings, is the purest and simplest clean-handed gambling that exists because it is recognized by all the parties who testified that it is not their intention to deliver the stuff they have bought on those hedge dealings, but they are only made for the purpose of protecting themselves, with the possibility on their part that some of it may be delivered on abnormal markets, or where the markets are cornered by other dealers in the pit. The purchase of a commodity by these hedge deals is not made with the idea at all of delivering it on the sale made on the Board of Trade, but is purchased by them in the first place with the idea of selling the stuff they have bought in the country in the best market that it may be sold in, and after it is sold they take in the deal on the Board of Trade, and they all admit that the object and purpose of it is in the nature of an insurance and not that they intend to deliver the stuff they have sold in the pit.

And these hedging transactions constitute a part of these continuous market quotations that are sent out; but, in addition to this, it is shown that a very large proportion of the grain bought in the country is not deliverable at all or of such character or grade as to be deliverable at all on these hedging deals, and it is known by the parties that it is not deliverable, and cannot be under the rules of the Board of Trade. It is known by them that they do not intend to deliver the stuff under the hedging deal, but they expect to sell the stuff they bought, in the markets elsewhere wherever the highest price may be obtained for the article. and the hedging deal might as well be made on any board of trade in the country as the Board of Trade in Chicago, so far as the question of delivery on it is concerned, because it is recognized to be only a protection against the actual stuff going against them in price.

It was said by counsel on the argument below that the millers, who actually handle all the grain of the country, if not permitted to do this, would be injuriously affected, and that this system carried on by the Board of Trade afforded a great convenience to this class of dealers. This is true, and we recognize this proposition, and

we may here add that personally we never could see the force of any of the bucket shop laws, and as said by one of the witnesses in this case that he "would still make hedging deals, and that they ought to be made, even though condemned by the laws of the State of Illinois." We agree with all of this proposition, but we are dealing with the law as it is found, and not with what we think it ought to be. If these kind of transactions are violative of the statute of the State of Illinois and of this State, and if the parties do not intend to make deliveries on these hedging deals, as they certainly do not, then they are contrary to law regardless of the question as to whether such a law ought to exist. We say that the most that could be said of these hedging deals would be that occasionally some of them may be made where unusual conditions exist, and therefore that the most that could be said of the intention of the mind of the parties who make them is that they do not intend to deliver on them, but that they know that circumstances may arise occasionally in which it would be policy to make deliveries under the sales; but, that it is ever really intended by the parties, is in conflict with common sense and in conflict with the very nature of the transactions; and, if any party said that he always intended to deliver under such circumstances, the Court would know that he was not speaking the truth.

One of this class of dealers was placed upon the stand by the complainant, a Mr. Frank B. Rice, an extensive miller, and on page 199 of the Record he states that his house buys grain for the purpose of making it into flour and then the following questions and answers occur:

Q. You can't deliver this flour in fulfillment of any contracts you make on the Board of Trade, can you? A. No, sir.

Q. Why not? A. Because we buy wheat or sell wheat; we could not very well deliver a product of the wheat.

Q. Well, then, you do not expect ever to do so, do you? A. We do not expect to deliver flour on wheat contracts.

Q. Well, what do you expect to deliver on it? A. You refer, now, of course, to options?

Q. But the question is now, you do not expect to make deliveries, do you? A. Of wheat?

Q. Of the wheat. A. At present time, no; but I have.

Q. Well, I am speaking now, generally? A. Generally, no.

Q. You do not expect to do that . . . ? A. Generally, no.

Q. Now and then, that is in your mind at the time you make a deal on the board, is it? A. No, sir.

Q. Now, you say that nearly every time you make a hedging deal on the board, don't you? A. Yes, sir.

Q. And that hedging deal, as a rule, is about equivalent to your average results in the production of flour? A. The average, I suppose, of our trades, is in the neighborhood of 10,000 bushels a day. Not necessarily always bought.

Q. What do you mean by that—buying and selling both? A. Yes, sir.

Q. What did you buy to-day? A. I buy cash wheat sometimes. To-day I bought cash wheat and sold July.

Q. Well, now, you know pretty well about the custom and practice of millers generally on this subject, don't you? A. Yes, sir.

Q. You have advised us what you do, and then I suppose they do about the same as you do, having in mind the same object and purpose, don't they? A. That is the idea.

Q. Yes, do you know as a matter of fact that you do not have to deliver anything on these contracts unless you want to? A. That is so.

Q. And you know that you were under no obligations to either deliver or receive, but you may go on the Board of Trade at any time before the maturity of your contract, and close it out and get the difference in price, don't you? A. Or give the difference.

Q. I say, or give it? A. Yes, sir.

Q. Do you know that that can be done at all times? A. Yes, sir.

Q. *And that is the usual practice on the Board of Trade?* A. *Yes, sir.*

Q. *And has been for a great many years? A. Yes, sir.*

Q. *And is generally recognized by all millers, speculators and*

grain dealers of the country, isn't it? A. *Yes.*

Q. You say, if I remember your language, you were compelled or forced to make a hedging deal. Now, you mean by that, that notwithstanding, or even supposing, that the law of your State does not allow you to make a transaction without intention to make actual delivery, still if it is to the best interests of your business, you go on the Board of Trade and make those transactions to protect yourself, don't you? A. Yes, sir.

Q. You know that is so, don't you? A. Yes, sir.

Q. Notwithstanding the law? A. Yes.

Q. *And you know that is indulged in by millers as a rule—millers and grain men on the Board of Trade, year after year?* A. *As a rule, yes, sir.*

Q. You state that you sometimes receive grain? A. Yes, sir.

Q. Now, under what circumstances will you receive it rather than to cancel the deal? A. *When there is not sufficient of the product being received from country points to supply our requirements.*

Q. That is when the market conditions are not normal and regular? A. Well, not altogether.

Q. *Well, as a rule, that grows out of abnormal conditions of the market? A. Speaking generally, I say yes.*

Q. Did you ever deliver on those contracts? A. I have.

Q. Under what circumstances would you make delivery? A. *We have made deliveries when there was a corner in the wheat market, and values were forced to such a point that we could not use the wheat in making flour.*

Q. Well, you only delivered, as I said before, when some abnormal condition existed? A. *Yes, it is abnormal and forced value is on us. We simply converted the stock in our elevators into a delivery.*

Q. You made a sale to-day, I believe you said, on the Board of Trade? A. Yes, sir.

Q. You did not have the wheat on hand, did you? A. Why, certainly I did.

Q. Did you have an option? A. I had an option on hand.

Q. *But have you the wheat on hand that you expect to deliver?* A. *No, but I could deliver it.*

Q. *I am not talking about your contracts, now, but you have none on hand that you even expect or intend to deliver, have you?* A. *No, sir.*

Q. What? A. That is right.

Q. *And never do, at the time you make them, expect to do so, that is, your situation is that it may possibly happen that it will be the best thing to do, but you do not expect to do anything of the kind?* A. *Yes, sir.*

This witness, who makes hedging deals every time he buys quantities of wheat throughout the country, gives us a clear idea of what they intend: That they do not intend to deliver on a hedging deal, and that millers and grain men generally, do not intend to do so, but the most they anticipate or expect is that there may be some abnormal condition of the market in which it may be best to make deliveries, and not that they ever intended or expected at the time the deals are made that deliveries will ever take place, so that we can state that these hedging deals, from the very nature of them, are the purest kind of gambling transactions, and it is no answer to say that they are necessary and convenient things for cash holders of grain throughout the country. It does not matter, though they hold billions of bushels of grain in elevators throughout the United States; it in no way has anything to do with the hedging deal except that it is *a reason for making them*, and it may be a sufficient reason for it, but that does not change the proposition. If they sell a million bushels in the pit for future delivery, and afterwards buy it in, they settle on the difference like any other transaction, and the fact that they may own a million bushels of wheat in the country or elsewhere in no way changes that transaction in the pit so far as the trade is concerned on the board and which constitutes the quotations.

Upon the subject of hedging deals we invite the Court's attention to the testimony of Mr. French, on pages 368, 369, 374 and 375, of the bound testimony; of Mr. Kinney, on pages 386 and 387; of Mr. Nye, on pages 409 to 410; of Mr. Watson, on pages 431 and 443 to 445; of Mr. Christie, on pages 534 to 537; of Mr.

Boyd, on page 621; of Mr. Crosby, on pages 746, 749 and 750; of Mr. Warren, president of the Board of Trade, on pages 894 to 897; of Mr. Hough, on pages 470 to 471.

These hedge deals constitute a part of the market quotations.

RINGS.

The manner of closing at least 98 per cent of all deals upon which the continuous quotations are founded, is what is known as "rings." This is a system invented by the Board of Trade for the very purpose of preventing deliveries. Its object and purpose is to do away with deliveries and to cancel transactions between the members.

This "ringing" system can be illustrated by this suggestion:

A has July wheat sold to B at a certain price; B to C at a certain lower price; C to D again at a higher price; D to E at a different price than those preceding, and so on down the line until it has reached X, and X again has sold it back to A. There is provided by each firm or broker in this speculative business, settling clerks, who will, after the markets have closed in the pit, have a place of meeting, and who undertake to carry out the "ring" system, so that they "ring" out, or cancel transactions entirely around the "ring" by the casting up of the account or differences and settling the account or differences between the various parties, and in order to carry out this scheme and effectuate it, the board itself, through its directors, each day fix an arbitrary settling price, by which all deals that are settled or cancelled or "rung" shall be so cancelled with reference to the arbitrary settling price fixed by the board itself for the purpose of aiding brokers in arriving at the matter of settling of differences; and every trade that is made during the day that it is possible to "ring" up by these settling clerks is cancelled and settled in this way. Those that cannot be "rung" up remain open until such time as some other "ring" will take place, because the deliveries are all on future months, and the testimony shows that it is very seldom when a delivery time arrives that there is anything outstanding that has not been "rung" up.

The following gentlemen, at the following pages of the bound testimony, describe the "ringing" process and the extent and nature of it:

Robert Nye, pages 403 to 405; Mr. Watson, pages 423 to 425, 436 to 437; Mr. McHenry, pages 579 to 580; Mr. Fox, pages 801 to 802; Mr. Warren, president of the Board of Trade, pages 821 to 823; Mr. Comstock, pages 849 to 850; and Mr. Hough, pages 458 and 459.

It appears also from the testimony of the parties above cited, that every firm engaged in buying and selling in the pits, keeps a "ring" book, in which they show the settlements and bought and sold prices.

It is further to be noticed that none of these speculative dealers keep a cash sale book, for the reason that they have no use for it, and do not engage in such trifling business as selling anything for cash.

It appears from the testimony further that after the "ring" is made the trades are entered by the different brokers in their "ring" book, and the difference figured between the bought and sold prices and the settling price fixed by the Board of Trade, and then the difference is paid to or asked from the clearing house.

Now, it is evident, even if no witness had said so, that these speculators do not intend or expect that there will be any deliveries on any of these transactions, if the same can be "rung" up and settled, and that usually and generally they are completely "rung" up before settlement days. How can it then be said that they intend at the time these transactions are made that there are to be any deliveries? The most that can be said for it is that it may be that some of the transactions at the delivery time may not be "rung" up, and as to a small portion of it, a "ring" might not be completed, and in such instances a delivery may occasionally take place. This is well illustrated by the testimony of Mr. McHenry, one of the leading and long-time speculators on the Board of Trade, at page 681, of the bound volume of testimony. This gentleman has been an active member of the Board of Trade since the year 1867, and this is what he says at page 681, Record:

Q. How many transactions did you ever make at the pit on

the floor of the exchange room where you thought at the time you made the transaction that you would be compelled to receive and pay for the commodity. A. I could not answer that question.

Q. Did you ever make one? A. What is that question? I never made a transaction upon the Board of Trade in my life, either as a scalper or as a commission man, and I did not feel that I *might be compelled* to receive or deliver the actual property under that transaction.

Q. At the same time did you also feel that you could close out the deal before the time of delivery arrived? A. Yes, sir.

So that it will be seen that the most that this large and extensive dealer on the Board of Trade can say is only that when he bought that he felt that he might be *compelled* to receive the property if tendered to him; but at the same time that he always felt that he could close it out before the time of delivery arrived.

As an illustration of this system, which we are now discussing, we call the Court's attention to section 6, pages 43 and 44, of the rules of the Board of Trade, of June 19, 1901, from which it will be seen that the Board of Trade has a rule recognizing and furthering the settlement of all contracts and provides that where one trade can be offset against the other that they shall be deemed settled, and that the balance between the market value of the property covered by the trade and the several contract prices shall be the means of settlement, and the difference shall be due and payable immediately to the party entitled to receive them; and that the Board of Trade shall fix a settling price and post it in the exchange hall and in the settlement room of the board, which must serve as a basis for the adjustment or settlement of contracts made during that day; and, furthermore, they specifically require that each member shall keep a settlement book in which shall be entered the names of the parties with whom settlements have been made, and the trades included in them and the prices at which the commodities originally sold or purchased, and the amount due to or from each of them; and the board of directors set apart a suitable office to carry out this settlement process of the trades made during the day, and furnish employes for that purpose, and require the members to make reports show-

ing the net balance due to and from each member as shown by their settlement books, and provides that each report made by them shall be accompanied with a check for the aggregate of balances due from him or them on the contracts so settled.

These entire rules are made up of a most elaborate system, all for the purpose of doing what? Simply a matter of arriving at the manner and means of settling the differences of these speculative trades, and strange to say, none of these rules anywhere even hint or suggest that these brokers shall keep any cash books or keep any books showing the sales of any cash grain or of any actual deliveries or require that they shall make any, but have adopted an elaborate system of controlling the manner of settling the deals, cancelling them, "ringing" them out and paying the differences, all for the purpose of furthering only the immense system of settling profits and differences between its members from day to day, and cleaning up the transactions day after day, as they proceed.

In addition to this we find that section 8, pages 44 and 45 of the same rules, provides for a clearing house and requires the members to make reports of any offset of any outstanding trade for future delivery, not only requiring him to do it, but makes him guilty of an offense if he fails to do it, and in his report must make a statement of what is due to the clearing house or what he claims from the clearing house, and to this clearing house he sends all his transactions with reference to "rings," cancellations and settlement deals, showing thereon any amount that may be coming to him by virtue of his day's transactions, and from what persons or members, and what amount is coming from him to any members or persons; upon each clearing house sheet he strikes a balance, and if the difference is in his favor he asks a check; if the difference is against him he is required to close a check to settle the difference in the transactions.

What is the object and purpose of this clearing house system? Is it a system to further deliveries in any intended transactions in the future? Is it a system having for its purpose or object the furthering of deliveries? Does it say anything about, or having anything to do, with that subject? Nothing whatever, but is a system having for its object and purpose a means of cancelling all

possible transactions that can possibly be cancelled, and in fact, is the only business that the parties are engaged in. They are in a purely speculative cancellation business and in the business of settling differences only. A very simple process can be gone through for the small actual cash deals that are ever made.

On page 96 of the rules in force June 19, 1901, will be found the rules of the clearing house of the Board of Trade, which provides the system for enclosing checks for the net balances payable to the clearing house, and further providing that parties having no items to clear must so report in writing, and that parties whose reports are clear on both sides, as well as those who show a credit balance, must be put through the clearing house.

A clearing house sheet is submitted in the Record.

These "ring" deals constitute a part of the market quotations.

TRANSFER TRADES.

Another system which is in vogue on the Board of Trade, is what is known as the "transfer system." This is explained by Mr. Hough, on pages 467 to 469, of the Record; Mr. Crosby, on pages 737-738; Mr. Fox, page 798; and Mr. Kellogg, on page 903, Record.

This "transfer trade" is defined to be a system largely practiced between brokers in the pit, by which one buys from the other, a commodity for future delivery, and afterwards one of them arranges with the other to transfer the account to somebody else.

Mr. Hough, at the pages above cited, particularly describes this, and states that these transactions are very frequent in the pit and on the board, and that this transfer might involve a great many parties and might finally wind up by transferring the deal from one straight across to the other, and that this occurs where "rings" are not made. It does not happen in "ringing," because they do not like to break the "rings," but if the "ring" is not made up, they may settle by transferring directly from one to the other and thus settle the matter entirely between all parties concerned in the transaction. And he states that where a "ring" does not go

through, then they resort to the transfer system, and this is another extensive means of settling contracts and putting them out of existence, and this constitutes a part of the quotations.

SPREADS.

This is a class of deals made on the Board of Trade and is explained by Mr. Christie at pages 540 and 541. It consists of a spread between the markets in two different places, the buying of a commodity in one market and selling it in another. For instance, the party may buy a certain quantity of July wheat in Kansas City and sell the same quantity for the same delivery in Chicago, upon the theory that the usual relative conditions between the two markets for the same commodity may widen before the delivery time, and thus give the party a profit, and he close the deal out then by selling the same quantity in Chicago and buying the same quantity in Kansas City, and thus have a profit of the difference between the "spread" conditions and the difference that existed at the time of buying. This is resorted to, as shown by the testimony, largely among speculators in the pit, and it cannot certainly be said that there is any evident intention to deliver on any such transactions, or ever could be. The deal is made in the first instance by the speculative broker with the expectation that the difference only is to be the profit, and that is all that he is dealing in or expecting to accomplish. These transactions constitute a part of the market quotations.

DIRECT SETTLEMENTS.

There is another means practiced among the members, and that is known as "direct settlement," in which these transactions are gotten rid of without deliveries, mentioned by Mr. McHenry, on pages 581 and 582, and by Mr. Warren, on page 824, of the Record, and is described by Mr. McHenry as follows:

Q. Will you describe what a direct settlement is? A. I sell

the Master five thousand bushels of wheat for December delivery at seventy-two cents. I buy it back of him at seventy cents. If he agrees to the settlement of that contract, it is what is called a direct settlement, that is, if there is no objection on his part or mine, that is what is called a direct settlement.

Q. And you do what? A. It goes through the same method.

Q. They cancel both contracts and agree to pay each other the difference? A. Yes, sir; through the clearing house of the Board of Trade under its rules.

Mr. Warren, president of the Board of Trade, in referring to how the direct settlements are made, on page 824 of the Record, the following occurs:

Q. Now, how are they? Just tell how they are settled. A. Well, if I have bought from you five thousand bushels of wheat for May delivery, and sold it to Mr. Robbins, and Mr. Robbins has in turn sold it to you, we make an offset of those trades, and each one pays or receives, as the case may be, the difference, based on the selling price of the day.

These transactions constitute a part of the market quotations.

SCALPING.

Another large and extensive business carried on at the pits is known as the "scalping" business, which constitutes a part of the quotations sent out. This business is described by the following witnesses, at the following pages: Mr. Watson, pages 434, 435 and 438; Mr. Hough, pages 465 and 466; Mr. Boyd, pages 621 to 623; Mr. C. Crosby, pages 730 and 731; and Mr. Kellogg, pages 902 and 903.

We call attention particularly to Mr. Crosby's testimony, because he has been for a number of years a member of the Board of Trade and an extensive operator and expert. On page 730 of the Record, he says:

Q. Are there also such transactions there known as scalping? A. Scalping, yes, that is a term that is in use in the trade.

Q. Are scalpers members of the Board of Trade? A. Well,

it is a term that is likely applied—scalping is applied primarily to members of the board who stand in the wheat pit, for instance, and trade for their own account on small profits and small losses on the fluctuations in the market.

Q. That is to say, let's take the case of scalping and the scalper is operating in May wheat. How does he conduct his scalping operations? A. Well, the term scalping is applied primarily to those traders who stand in the pit and trade for an eighth or a sixteenth profit or loss, make a rapid turn in the market.

Q. Close out a trade as soon as they get a small profit? A. Yes, or a small loss, as quick in one way as in the other.

This scalping business is shown to be dealt in largely by members and a large number of the members are engaged in nothing else—do not even keep offices or places of business of any kind, but simply visit the pit from day to day and deal in the scalping business. In this business, of course, it cannot be contended that parties ever intend or even remotely expect that there will ever be any deliveries on their transactions. They don't make them for that purpose, but simply stand in the pit and buy or sell and go out by closing the deal on an eighth or a sixteenth of a cent profit, or closing it out at a slight loss, and go home at night with the entire business closed up, having, perhaps, during the day traded in hundreds of thousands of bushels of stuff, and when the market closes the entire business is settled.

These transactions constitute a part of the market quotations.

ARE THESE DEALS MADE WITH ANY REAL INTENTION OF MAKING DELIVERIES OF THE PROPERTY SOLD OR OF RECEIVING THE PROPERTY BOUGHT.

From the very nature of the transactions that we have heretofore described, it occurs to us that it rises to the degree of absurdity to imagine that it ever was intended or calculated that deliveries were at all contemplated, or that deals were made with any expectation that they would ever come about. This clearing

house system for clearing the trades of each day, this canceling and offsetting of deals, this "ringing" system, this sending to the clearing house of checks to settle the balances of future transactions and adjusting the differences in the trades and receiving from the clearing house a check next morning to settle such differences as would be in favor of the party reporting, and this elaborate system can mean nothing else than that its business consists principally and almost wholly of this speculative feature, a settlement of differences, leaving what little cash business that is done outside of the pits to take care of itself.

MR. FRENCH.

Now, as to whether deliveries are intended or expected on these transactions, let us refer to the testimony. First, the testimony of C. B. French, of Kansas City, who, from 1892 to 1899, dealt in grain options to the extent of over one hundred millions a year, and who sent his orders in this immense business to the members of the Board of Trade, Chicago, and who testifies that all this business was placed by members of the Board of Trade in the pits in buying and selling, and that all of his business was settled on differences, and that no deliveries were ever made by him, and that he never was asked to take or accept anything. We refer to pages 361, 362, 363 and 364-366, of the Record, found in the large bound volume. On pages 358 and 359 of the testimony, he states that he dealt in over one hundred million of bushels of wheat and grain and provisions a year, the principal part of it on the Chicago Board of Trade; that the orders were sent by him to members of the Board of Trade, and that they were executed on the floor by large speculative firms of M. S. Nichols & Company, Lamson Bros., Baldwin & Farnham, Swartz, Dupee, F. G. Logan and others. It may here be stated that these gentlemen are some of the largest speculators on the board. He states that his orders were nearly always by telegram; that his house was one of the first to use private wires in the country, and that he had a private wire for twelve or fifteen years from Kansas City to St. Louis, and part

of the time directly to Chicago. His testimony is too long to quote, but must be read to be understood. He states, on page 364, that all of these deals for all of the time were closed up by paying the profits and deducting from margins their losses. The following then occurs on page 364:

Q. Then the whole transactions were closed up by merely paying or receiving the difference in the market price? A. Yes, sir.

In speaking of the custom and practice on the Board of Trade, on page 366 of the Record, he says:

Q. What was the understanding of course of business with regard to that after making a purchase? What was the understanding of course of business as to closing that trade out? A. The understanding was that if we had ten thousand bushels of wheat bought from a Chicago house on the Board of Trade to-day, and we wanted to close it out tomorrow, we could do so and get our money, and that ended the transaction so far as we and they were concerned.

Q. Get what money? A. Get our profit, if we had a profit; or pay our loss, if we had a loss.

Q. And the profit or loss would be made up of what? A. Made up of the difference between the price at which we had bought and the price at which we had sold.

MR. KINNEY.

Mr. Kinney, located at Kansas City, who was the correspondent of Weare & Company, members of the Board of Trade, and several other large firms, has been in business some fourteen or fifteen years, and we call attention to his testimony on pages 380, 381, 382, 383, 385 and 388 of the Record.

On page 383 he states that his contracts on the Board of Trade were speculative trade and the buying and closing out or the selling and closing out of option trades without deliveries. That deliveries were never made and no payment made upon the commodity either way, and where the trade is closed out, no com-

modity is paid for, and that the trades in his transactions through the members of the Board of Trade were settled by settling the differences between the purchase and the selling price.

On page 385 he states that in all his transactions for future delivery that a very small per cent, possibly one-tenth of one per cent, was ever delivered, and that he had transactions on the Board of Trade for fifteen years, and every day; and on page 385, that he had done business on the Board of Trade in this way for a year at a time without ever making any deliveries at all; on page 388 he testifies that he never had any understanding about carrying the stuff until delivery day, but his understanding was that he could sell it out, or buy it in and settle up by settling the difference. On page 388 he states that he had large dealings on his own account with members of the Board of Trade, and that in them, nothing was ever delivered, but they were closed out on the differences.

This gentleman was a member of the Board of Trade of Chicago when he was dealing in this business, and so testifies at page 388.

MR. WATSON.

Mr. Watson, on page 423 of the Record, states:

Q. Now, as a rule, what do they do with those transactions? A. As soon as possible they are settled.

Q. Settled by——? A. By ring.

* * * * *

On page 434 he testifies:

Q. Among that class of men that deal there at the pits, do you know how many of them there are that close up their deals every night? A. No, I don't. Quite a number.

Q. Quite a number? Those who close up their deals every night, how do they do it? While at the pits they are buying something for future delivery all the time. A. They buy and sell the same amount each day.

Q. Then what do they get out of the trades? A. Settle up.

WALTER C. HOUGH.

Mr. Hough was a member of the Board of Trade from 1875 to 1900, and did business all the time on the Board of Trade, and at pages 459 and 460 of the Record, he states:

Q. In what manner do they usually close up their trades there? A. Shall I answer the question? By settlement, rings, as I said before, going through the clearing house.

Q. Do you know what proportion of the deals at the pits which are deals for future deliveries of commodity are closed up by rings, and what proportion are closed up in any other way? A. Well, of course, I would know more about my own business and the people I worked for than I would of the general run of the floor, but you asked me how much of the transactions are settled, and what is delivered through the clearing house, and I would say it was very nearly all, possibly there wouldn't be one per cent of the stuff delivered as cash, as of the trade.

Q. Nearly all of it closed out by rings and through the clearing house, isn't it? A. Yes, sir.

JAMES B. HETH,

of Chicago, was a member of the Board of Trade for twelve years; joined the board when he was twenty-one years of age; became a member in 1888; was a member of the old firm of Heth & Son on the board. On page 505 of the Record he testifies as follows:

Q. Were those dealings that you conducted for your own house dealings in future or in cash commodities? A. Future, sir.

Q. In the dealings that you had in futures, how were those transactions closed out? A. Settled by rings, settled.

Q. Were any of them settled by actual delivery of the stuff and payment for it? A. None that I ever knew of, sir.

Q. And how many years did you do business on the floor of the exchange room for Heth & Son? A. Five or six years.

And on page 501 the following questions and answers:

Q. And in that trading, covering a period of five years, in wheat, you never received or delivered anything? A. I don't believe we ever paid for one cash wheat, sir.

Q. And if you didn't pay for it, you didn't receive it? A. Not to my knowledge.

CHARLES K. NIMS.

A resident of Chicago and a member of the Board of Trade and has been for ten years. At page 496 of the Record, he testifies:

Q. State whether any of these customers in the beginning of their transactions had told you that they did not want any of the commodities, that they merely wanted the profit that was in it? A. Well, there wasn't anything said in reference to that matter.

Q. Did any of them receive and pay for any of the stuff that was bought on their order? A. They did not.

Q. Did any one of them deliver any of the stuff that was sold on their orders? A. No, sir.

And on page 497, the following:

Q. Now, in that two millions of stuff that was traded in, that was all traded in at the Board of Trade, was it? A. Yes, sir.

Q. In that two millions of stuff, how much was delivered? A. None; it was sold out.

Q. How much was paid for? A. None.

And on pages 497 and 498:

Q. Did you deal in five thousand bushels or five million? A. Oh, I dealt in hundreds of thousands of stuff, I don't know how much.

Q. And in that hundreds of thousands that was dealt in in 1900, how much of that was delivered? A. None.

Q. The year before that was the business done for you, or by you, or for your customers, large or small? A. Fairly large.

Q. Amounting to how much, would you say? A. I cannot say; hundreds of thousands of stuff.

Q. And in that lot, in 1899, how much was delivered? A. My stuff was sold out before the option matured. There wasn't any delivery connected with it.

Q. No delivery at all? A. No, sir.

Q. Now, take the year before that, was your business large or small? A. I could answer just the same.

Q. Was there anything delivered there to you? A. No, sir.

Q. And the year before that was the business large or small? A. The same, no delivery.

C. C. CHRISTIE.

One of the defendants and a dealer of Kansas City, who has dealt largely and still is dealing largely through members of the Board of Trade of Chicago. Mr. Christie describes the nature of the transactions at pages 516 and 517, as appears from the following:

Q. Commence with the initial order and go through the whole process until that order is closed out and settled. A. Well, suppose I send Logan an order to buy twenty-five thousand bushels of May wheat: The telegram I would send him would read, "Buy twenty-five May wheat." If I wished it bought at a limit price, the message would so state. If there was no limit on the message, Mr. Logan would send his broker into the pit to buy twenty-five thousand bushels of wheat at the market and telegraph me, his message reading, "Bought twenty-five thousand bushels May wheat at" whatever price he paid for it. Then, when I closed that trade, I would send Logan an order reading, "Sell twenty-five thousand bushels May wheat," and Mr. Logan would repeat the same process, send his broker into the pit to sell twenty-five thousand bushels of May wheat, and would report that sale to me by wire, have his bookkeeper make me up an account purchase and sale of that transaction, charging me the loss in the price, if there was one, a commission, and the government war tax, and debiting my account with this amount of money; or in the event that the transaction had resulted in a profit, my account would receive a corresponding credit.

Q. Then, after you got the credit, what further have you, as a customer, to do with the transaction on the Board of Trade? A. Nothing whatever.

Q. Do you know, according to the practice of the Board of Trade, what becomes of those two transactions that Logan had there on your account? A. Yes, sir; they are kept open on Mr. Logan's books until some counter-trades that he makes with members of the board enable them to form a ring, and as soon as a ring can be formed, they are rung out and settled by paying the difference between the prices bought and sold through the clearing house.

At page 518, the following:

Q. Will you state what the practice is as to closing up those deals? A. Through the clearing house.

Q. Yes? A. Every member who has any trades they are ready to settle through the clearing house is obliged to fill out a sheet, which is called the clearing house sheet, claiming from one member and crediting to another, and the differences that are due or coming to him, and any items that are cleared this way for his account, and he is obligated to send this sheet to the clearing house with a check to pay the difference, if he owes money, or a claim on the clearing house for the balance if one is coming to him, and the transaction is cleared and closed up.

WM. E. McHENRY.

One of the large and extensive dealers on the Board of Trade, and lived in Chicago thirty-eight years. Has been an operator on the Board of Trade since 1867; was a member of the old firm of Lake & McHenry; afterwards did business on his own account, his transactions running as high at times as five million bushels in a single day. On page 578 of the Record, the following occurs:

Q. Now, we will come to the ninety-five per cent of transactions; how were they closed? A. They were closed under the rules of the Board of Trade by a system adopted under those rules of what are called settlements.

Q. On rings? A. Settlements on rings, yes, sir.

Q. And closing out through the Board of Trade clearing house? A. Yes, sir.

JAMES E. BOYD.

Ex-governor of the State of Nebraska and now residing at Omaha, but prior to that time was for four years on the Board of Trade of Chicago, and a member of the board, and at the head of the firm of Boyd, Paxton & Boyd, and did the third largest speculative business on the board, and dealt in as high as four to five million bushels a day. On page 610, the following occurs:

Q. Then in all of these trades rung up, there was no delivery of the commodity and no payment for it? A. No delivery, certainly; no; none whatever.

Q. Well, was there payment for it? A. No, sir; no payment for it; it was a payment of differences.

Q. What proportion of your business on the Board of Trade resulted in having the deals rung up and settled by a mere payment of differences in market values, and what proportion resulted in actual delivery and payment for the commodity? A. Well, that would be a pretty hard question for me to answer what proportion, because we are not a receiving house, we had no elevators or anything of that kind; we only received when it was absolutely necessary. We tried to avoid receiving or delivering as much as possible, because of the expense attending it, and that is why we wanted these trades rung up.

W. S. CROSBY.

For thirty-six years a resident of Chicago and in the grain business ever since he came there; been connected with two or three of the large commission houses of Chicago, and then in business afterwards for fifteen years by himself, in the commission business on the Board of Trade. He states that his deals on the board would run up into a million bushels a day, sometimes as low as a hun-

dred thousand. On pages 714 and 715, of the Record, he describes the manner of doing business, showing that when a customer sends in his order, the purchase or sale is made and posted to the customer's account, and when they get an order to close that deal, they go on the floor and make a sale and enter that in his account. Then, after that is done, an account of purchase and sale is rendered, and a statement showing the profit or loss, whichever there may be. On page 715 he answers as follows:

A. Why, we render him an account purchase and sale of these two transactions, after charging him the commission agreed upon and the tax and other charges, if there be any. We credit his account or charge his account with the profit or the loss.

Q. And if he wanted to close the transaction with you and he had made a profit, would you send him a check? A. Yes, sir.

Q. And the amount of that check would be the amount of the profit which would result from the difference in the two market prices after deducting your commission, and at present, the revenue tax, wouldn't it? A. Yes, sir.

AUSTIN WRIGHT.

Popularly known as "Charley" Wright. One of the most popular continuous and extensive dealers of the Board of Trade of Chicago. A resident of Chicago for thirty-three years, a member of the Board of Trade for twenty years, and has dealt on the Board of Trade for thirty years, and in the pit for over twenty years. He states that there is no difference in the manner of settling these transactions now on the Board of Trade than there was when he first commenced, except in the matter of detail, except that they have of late years established a clearing house and a system of notices. At pages 784 and 785, the following appears:

Q. How extensive were your dealings as a speculator? A. Very large.

Q. What do you mean by very large? Can you fix it by the day, week, month, or year? A. Well, I don't trade every day; I

buy or sell a great big line of stuff and then stay with it until I get tired or satisfied, and then get out.

Q. And the stuff that you buy or sell is generally for future option? A. Yes, sir.

Q. Was it always for future option? A. Yes, sir.

Q. How were those transactions in future options, as a rule, closed? Were they closed before the day of delivery arrived? A. Not always.

MR. JENKS: Yes, read the question.

Q. That is as a rule? A. As a rule, they were.

Q. What proportion of those transactions were closed before delivery? A. Nearly all of them.

Q. Can you give us a per cent of the transaction that resulted in delivery to you and payment for the commodity? A. No, I cannot. I never paid for any stuff but three times, I think; three or four times.

Q. Three or four times? A. Yes, sir.

Q. In thirty years? A. Yes, sir.

Q. During the past year, have you been dealing any? A. Yes, sir.

Q. And during that time, how much stuff have you received, delivered and paid for? A. None.

Q. And during the year before, you were dealing then? A. Yes.

Q. During that time, how much stuff did you receive, pay for and deliver? A. Not any.

Q. During the year before that, how was it? A. I paid for none.

Q. How was it the year before? A. I have not paid for any stuff since 1892.

On page 786, he states that he occasionally traded in a half million or a million bushels of wheat or corn. The following question was then put to him:

Q. At the time of transaction in those commodities on the floor of the exchange room of the Board of Trade, what was your intention as to receiving and paying for that stuff? A. I had

no intention of either receiving or paying for it unless it was to my advantage to do so.

* * * * *

Q. And take that same broker that you operated through quite frequently, did he ever deliver anything to you or call upon you to deliver anything to anybody else? A. No, sir.

Q. Did he call upon you to pay anything but the difference in market price? A. That is all.

WM. J. FOX.

A resident of the City of St. Louis, and formerly lived in Chicago for twenty-two years, and was a clerk in Board of Trade houses on the Chicago Board of Trade for Walker & Company, McClain Bros. & Company, R. G. Merrill and R. G. Zorge, some of them commission firms and some of them scalpers on the market. He defines a scalper as being a member who trades on his own account. On page 798, the following occurs:

Q. How did they close those trades up that were made at the pits, do you know? A. Transfer or settle.

Q. How was that transfer accomplished? A. Down on the exchange floor, go down and give two different parties each other's names.

Q. And then the transfer would be made? How would that affect the orginal party, Merrill or Zorge? What would be their position in the trade after that transfer? A. He would not have the trade at all.

He then states that Merrill and Zorge dealt on the board to the extent of a half million bushels a day on each side in wheat.

The following question, on page 799 of the Record, was then put:

Q. In the whole bulk of dealings that they had there, what proportion resulted in actual delivery and payment of the stuff? A. On the payment of the stuff?

Q. Yes? A. I remember only one case. (Which he then states was only five thousand bushels of wheat.)

The following important testimony from this clerk, who had charge of ringing and settling business as clerk, and who, from day to day, met clerks of other houses in settling their deals, is especially called to the Court's attention, on pages 799 and 800 of the Record:

Q. And as a clerk, what part of the business did you have to attend to? A. Taking care of trades in the option book, the clearing house sheet, ring book.

Q. Were you in a position so that you could know how the trades made by them were closed, whether by ringing up or by delivery? A. Yes, sir.

Q. As a rule, how were they settled? A. Settled by ringing them up.

Q. What proportion of their deals resulted in deliveries while you were there, I mean their transactions on the Board of Trade? A. About one per cent, I should say.

WM. S. WARREN.

Mr. Warren is president of the Board of Trade and is a member of a commission firm engaged in business at the pits, engaged in actual grain handling and in speculative business at the pits. On pages 824 to 827, the following occurs from his testimony:

Q. Yes, but I asked you if you knew of your own knowledge, and I asked you that because you answered once that you didn't know of your own knowledge. What has the settling price to do with your ringing up deals? A. The payment of differences is based upon the settling price.

Q. How is it based upon the settling price? A. Through the clearing house.

* * * * *

A. I know, in a general way, that these differences are adjusted by the settling clerks every day upon the settlement price posted upon the exchange.

Q. Yes? A. And that the differences are adjusted through the clearing house.

Q. How does there happen to be anything due or payable? A. The differences, the payments arise out of the difference in price between the purchases and the sales which you have passed through—which have been settled during the day.

* * * * *

Q. Now, how are they; just tell us how they are settled? A. Well, if I have bought of you five thousand bushels of wheat for May delivery, and sold it to Mr. Robbins, and Mr. Robbins has in turn sold it to you, we make an offset of those trades, and each one pays or receives, as the case may be, the difference, based on the settling price of the day.

Q. And we will say the initial transaction was to-day and the closing out of the whole business was tomorrow, and this deal was a purchase for May delivery, then that whole business would have been conducted from beginning to end and settled on the mere difference in the market price, wouldn't it? A. Yes, sir.

Q. *And all the members of the board conduct their business in the same way where the trades are the same as you have just described, I mean where the customers give the same sort of orders and you are able to make the ring in the same way?* A. *Every member of the board, Mr. Jenks?*

Q. *Yes, all of them who do that kind of business, do they do it in the same way?* A. *That is the general course of business,* yes, sir.

WALTER COMSTOCK.

A commission merchant on the Board of Trade, and connected with one of the largest firms in Chicago, Schwartz, Dupee & Company; a member of the Board of Trade, and has been since January, 1900, when he went into the firm. Every member of the firm of Schwartz, Dupee & Company are members of the Board of Trade; that firm, like all other large speculators on the board, have settling clerks, ringing clerks, settling books, option books and option ledgers. He testifies that the firm dealt in an average of a million bushels of wheat a day.

On page 900 of the Record, the following occurs:

Q. And if you had such a customer who had been with you for years and had a lot of transactions, and never did receive or deliver anything, would that be any indication to you as to whether he intended to receive or deliver anything? A. Well, he might the next time.

Q. O, he might, but it would be pretty good guessing? A. That is as close as I can come to it.

Q. It would be pretty good guessing that he didn't want it; he merely wanted the money that was in it, wouldn't it? A. Well, I have had them trade for quite awhile and then finally take in cash stuff.

Q. Yes, but it was because they got stuck, wasn't it? A. No, sir.

Q. Because they could not get out? A. No, they may have thought it would go to a premium and would want to hold it.

Q. But as a rule, they don't take anything, it is pretty good guessing that they don't want it? A. If they don't take anything, yes.

We have taken the above from the testimony of all of the witnesses who have testified on the trial of this case to show how these members of the Board of Trade, and the parties who have been dealing there for years, understand the practice and custom. On last April, since the O'Dell case was tried, Mr. Robbins, for the Board of Trade, undertook to take some more testimony, and put on what he called "cash dealers" of grain, and among the cash dealers is the gentleman, Mr. Frank B. Rice, the miller, whom we have heretofore referred to, who, in effect, defined that he never intended to deliver anything on his hedge deals, which were the only kind he made, unless there was an abnormal condition in the market; that is, unless the unexpected happened.

They put upon the stand Mr. Geo. E. Marcy, of Armour & Company, who is one of the largest cash grain buyers, perhaps, in the world, and this man testified that he is a handler of cash grain throughout the country; went on the Board of Trade and made hedging deals, and then admitted that in all hedging deals that they made he did not deliver over ten million a year of the

fifty or more million of bushels dealt in, and attention is invited to the testimony of these so-called cash dealers for the purpose of showing that only two of them undertake to make any estimates of the per cent of deliveries made on their hedging deals. These two men are Mr. Marcey, of Armour & Company, and Chas. A. Weare, of the Weare Commission Company; and Mr. Weare, the representative of one of the largest so-called cash houses in the country, admitted that in all their hedging deals they did not deliver over three per cent, as it appears, commencing on page 194 of the Record, and stated that one per cent of all their hedging deals resulted in ringing up and settling through the clearing house under the regulations of the Board of Trade.

After this witness had gone off the stand he asked to come back and correct his testimony, and did so by correcting it so as to say that he had delivered about three per cent of his hedging deals, and that he had closed out through the clearing house by rings, ninety-seven per cent.

These are the only two gentlemen of the so-called cash dealers who made any estimates of the amount delivered, or that would do so, or tried to do so, all others seeking to evade it, except Mr. Rice, the miller, who candidly admits that he did not intend nor expect to make deliveries on his hedging deals unless some abnormal conditions in the market arose.

The testimony of C. C. Christie, commencing on page 515, and of Wm. S. Crosby, commencing on page 701, give a correct history of all this speculative business.

PER CENT. OF DELIVERIES.

We now desire to give to the Court a statement of the various witnesses, that went upon the stand, as to the percentage of deliveries and we will try to take them in their order:

C. D. FRENCH, who has been dealing for twenty-five years through members of the Chicago Board of Trade, dealt in millions of bushels, at page 366 of the Record, puts the estimate of de-

liveries on these future transactions at one-two-hundredths of one per cent (1-200 of 1 per cent).

MR. KINNEY, a dealer for fifteen years on the Board of Trade, at page 385, puts the estimate at one-tenth of one per cent (1-10 of 1 per cent), possibly *one* per cent.

MR. HOUGH, a member of the Board of Trade for many years, at page 460, puts it at one per cent (1 per cent).

MR. HETH, a member of the Board of Trade, at page 509, puts it at five thousand bushels out of five or ten million.

MR. McHENRY, one of the members and long-time dealers on the Board of Trade, on pages 577, puts it at about five per cent (5 per cent).

MR. BOYD, at one time a member of one of the three largest houses in Chicago, and a dealer in millions of bushels a day, at page 610, puts it at one-half of one per cent (½ of 1 per cent).

MR. CROSBY, representative of some of the largest houses in Chicago on the Board of Trade and for years a member thereof, at page 719, puts it at one per cent (1 per cent), or in other words, he says that "ninety-nine per cent is rung up and settled before delivery day."

MR. WRIGHT, one of the largest dealers in and on the Board of Trade at Chicago, popularly known as "Charley" Wright, at page 785, states that he dealt in millions of bushels and never delivered any in all his career, except three times, that is to say, three or four times in thirty years, and hasn't made a delivery since 1892.

MR. FOX, a clerk at different times in four of the largest houses on the Chicago Board of Trade, who dealt in millions of bushels, at page 799, says that he never knew of but one case of which a delivery was made and that was only five thousand bushels of wheat. Therefore, his per cent of average is so small that figures could hardly express it; but finally, at page 800, he estimates it at one-tenth of one per cent (1-10 of 1 per cent).

MR. COMSTOCK, of the firm of Schwartz, Dupee & Co., one of the largest, if not the largest, house in Chicago in its line, at pages 897 and 898, puts his estimate at one to two per cent (1 to 2 per cent), or, in other words, ninety-nine or ninety-eight

per cent of all the deals of their house were settled on differences without delivery of anything, and they dealt at times in as high as five million bushels a day.

MR. WEARE, of the Weare Commission Company, one of the so-called cash houses, and one of the large institutions of Chicago, at page 171 testifies, on all of their deals in the pit which were hedging deals, ninety-nine of them resulted in ringing up, leaving one per cent (1 per cent) only of deliveries. He afterwards went back on the stand, page 194, and raised the estimate to three per cent (3 per cent).

MR. WARREN, president of the Board of Trade of Chicago, who does both a cash and a speculative business, states, at page 828, that he deals in from fifty to sixty-five millions a year at the pits in futures, and he testifies at page 830 of the bound testimony, that for the delivery month of the month in which the testimony was taken, they did not pay for anything.

On page 870 of the Record he states that during the year 1901, his house dealt in, speculative and purchases, to the extent of seventy-five million, four hundred and forty thousand (75,440,000) bushels, and that the total amount of the actual delivery by warehouse receipts on these seventy-five million, was only three million, one hundred and forty-five thousand (3,145,000); this would make about four per cent (4 per cent).

In this connection it is important to call attention to the testimony of Mr. Warren, found commencing on page 885 of the Record, wherein the following takes place:

Q. If the bucket shops are closed, is the business of the Board of Trade increased because the persons who deal at the bucket shops would deal on the Board of Trade through its members? A. Yes, sir.

This is the most convincing testimony of all, if there was any doubt at all about the nature of their purpose. Here is the president of the Board of Trade condemning so-called bucket shops throughout the country and seeking to enjoin them from doing business on the ground that they are gambling, and then admitting on the stand that the result of closing them up would be to send the business to the members of the Board of Trade. It may be

asked, what kind of business? Simply this speculative business, which is the business carried on at the pits, and from which result the quotations in question.

And in the same line attention is also called to pages 526 to 529 of the Record, where a conversation took place between Mr. Warren, the president of the Board of Trade, and Mr. Christie, in which the true spirit of the Board of Trade's position is disclosed. In that conversation Mr. Christie was asking for the quotations and Mr. Warren refused to allow Mr. Christie to have them unless he, Christie, would agree that every order he got would be placed on the Board of Trade, and that the bucket shops either had to quit or that the Board of Trade had to quit.

Here is a remarkable situation indeed. The president of this great Board of Trade contending that it is not engaged in bucket shopping itself, and contending that defendants were, and then, offering to agree with Mr. Christie that if he would turn that business of his over to the members of the Board of Trade of Chicago, and allow it to be done through them, that he might have the quotations. This is certainly the strongest proof of the duplicity, insincerity and falsity of the position of the Board of Trade, and Mr. Christie, in answer to that suggestion, made the following reply: "That is a remarkable statement. Do you mean to say that if all the men who bet on these markets outside of the Board of Trade should quit, that there would be no more markets for grain in Chicago?"

And Mr. Warren's answer: "Oh, no; there would be a casn market for grain."

And Mr. Christie then said, "Would not that market be there forever?"

And Mr. Warren replied, "Yes, that would be true, but there would be sixty men upon this floor, could do all of that business, and there were two thousand members of this Board of Trade trying to make a living."

What does this mean? An admission of the president of this board that sixty men could do the little cash business around the sides of the hall, but that the two thousand members of the Board of Trade who were trying to make a living, would have

to do what? Would have to quit, of course, because of the fact that they were dealing in speculative business exclusively. These men that were dealing in the futures and speculating from day to day, were the ones that he was looking after. And this conversation shows that Mr. Warren's motive, and the motives of the Board of Trade, was an effort to procure all the so-called bucket shops in the country, if possible, to place all their deals through the Board of Trade, and if they would do so, then, of course, they would not be bucket shopping, in the opinion of the Board of Trade of Chicago.

But, it must not be forgotten, that even this small percentage of deliveries that are above mentioned, to-wit, an average of perhaps one and one-half (1½ per cent) per cent, are really not deliveries at all, and never were. The Board of Trade has a system which they call a "delivery notice" system, which system consists of one party taking a notice that he has, for instance, five thousand bushels of wheat to deliver on delivery day and hands it to B, and B to C, and C to D, and thus down the entire line until they reach X, and X, on the other hand, if he has nobody to give it to, and cannot dispose of it, may have to finally take it and pay for it. They call the handling of this notice from one to another as a delivery, but as a matter of fact the testimony shows that there is no delivery made from one to the other, but they simply settle and adjust the differences through the clearing house, and this is the way a large portion of even this small per cent of deliveries is made, so that when the matter is run down to the last analysis, it absolutely fades away, and presents the most gigantic scheme and system of gambling in futures that has ever existed, and upon these gambling transactions alone is founded the quotations which the complainant seeks to enjoin the defendants from having and using. The market quotations arise from nothing else than deals known as "rings," "stop order," "hedges," "transfer trades," "spreads," "direct settlements," and "scalping," and from deals only that are for the future, purely speculative in character, with the expectation of closing all of them without any deliveries.

Our position is, that the Court will find from this testimony

that the complainants are violating the law and do not come into Court with clean hands themselves, and for that reason have no standing in equity, and we call your attention to the following leading authorities upon that proposition:

Board of Trade v. O'Dell Com. Co., 115 Fed. 574.
110 Federal, 689, *Del. R. R. Co. v. Frank.*
80 Federal, 896, *Heilson v. Foster.*
144 Ind., 86, *Lynch v. Rosenthal.*
43 Kansas, 404, *Water Sup. Co. v. City of Potwin.*
94 Ill. App. 229, *Christie v. Board of Trade.*

(94 Ill. App., 229). At page 236 that Court says what we now say of this case:

> "If it could be said that there appeared to have been a use, slight and comparatively insignificant in extent, for purposes other than gambling, still the conclusion would be unaffected that the regular and substantial business of appellant for which the quotations were sought, was an illegal business. In a court of equity, the pretext could not be permitted to hide the substance."

How aptly that medicine fits this case where the Board of Trade is now undertaking to ask a court of equity to do something for it. Here the deliveries are *so slight and comparatively insignificant in extent for purposes other than gambling that the conclusion is unaffected that the regular and substantial business of the Board of Trade in their pits,*—and from which quotations arise and which they seek to enjoin the defendants from using—emanate, is illegally carried on and permitted to be carried on, by the Board of Trade, that in a court of equity *the pretext cannot be permitted to hide the substance.*

The evidence here conclusively shows that the per cent of deliveries that ever result from these speculative and future deals, are so slight and insignificant that in our judgment no court could be justified in saying that they ever expected or honestly intended to make deliveries thereunder, or receive deliveries in such transactions, and indeed the entire system demonstrates conclusively that such is not the intention and is not the fact and cannot be, while

a large amount of actual grain commodities are handled each and every year, and while much cash grain may be sold on the sides and around the edges of the exchange hall, yet this business has nothing whatever to do with the speculative feature, and in this speculative business the evidence has put at rest any possible justification for the claim that deliveries are intended.

We here desire to state what was stated on the oral argument: *"If the complainants were here in this Court trying to prove that they did not intend to deliver, this Court would certainly be justified in saying that inasmuch as we find from ninety-seven to ninety-nine per cent of these speculative trades are settled up and rung out by the settlements of differences, we will hold your contention to be true; and, therefore, we say as the reverse of it, that inasmuch as only one to three per cent is ever delivered, the Court should find that it is not their intention to deliver."*

Let us here again recall a few evidential facts and illustrations from the testimony in this case:

After the Chicago Board of Trade was organized it was not long before they discovered that the making of contracts for future delivery was an impossibility unless they found some means of canceling these contracts, as it would be an utter impossibility to keep track of and make deliveries of the immense amount of grain both bought and sold for future delivery, and the first thing they did was that each house doing business on the Board of Trade employed clerks whose business it was to run around among the other brokers with whom they did business and cancel as many of these trades as they could. After a time one bright fellow proposed a scheme which they called a "ring," and which was immediately adopted, and then for a number of years as fast as the trades got into such a position that they could be "rung," they were made up in the various offices, and there were employed hundreds of men called "settling clerks" whose business it was to go around each morning and collect differences from all firms who owed a difference on trades that were "rung" up the day before to the houses such clerks were employed by. This necessitated the employment of a large additional force and the writing of innumerable checks by each and every broker who did any consid-

erable business on the Board of Trade. In the course of time another bright fellow proposed a clearing house, which was afterwards adopted and which is now in force, and which is probably the most complete piece of machinery for canceling contracts that was ever invented, as it performs the service every day of canceling *all* the contracts that it takes the combined trading force of *all* the brokers engaged in business on the Chicago Board of Trade *all* the previous day to make.

In the early history of these transactions it was never pretended that the delivery on these future contracts was anticipated or contemplated, and it was not until after the courts began to say that all of these Board of Trade contracts were bets that the board even made the declaration that it was their *intention* to receive and deliver. It was not until the board discovered that bucket shops were very immoral and engaged in a most vicious species of gambling, and that it was their special duty to suppress such gambling, that they had any rules preventing members of their board from trading with the public in exactly the same manner as do the bucket shops all over the United States, and all members of the Board of Trade *did* business with the public in the manner above described to a greater or less extent. In explanation of this, any member of the board was allowed to trade direct with his customers or with the public, buying or selling the property themselves, and allowed to cross trades in their own offices, crossing trades meaning that if they had an order from one man to buy and from another man to sell the same property for the same delivery, they would put these two trades down to these two men without any transactions on the Board of Trade. They have now made, however, stringent rules against this sort of thing since they have discovered the great iniquity there is in this kind of trading, because it was popular with bucket shops. The truth remains however, that it would be an impossibility to do this business making contracts for future delivery in any other manner than what was originally the purpose and intention of the Chicago Board of Trade, and their contracts to-day are intrinsically the same as they were before these great reforms on the board were instituted, and of necessity cannot be changed, and the whole sys-

tem of the Chicago Board of Trade to-day, outside of the very small part of it which is devoted to the handling of actual grain, is simply a great big piece of commercial machinery, highly evolved and elaborated, for the purpose of making contracts and canceling them without being obliged to receive or deliver any grain on these contracts, and it is a fact beyond controversy that a man may trade on the Chicago Board of Trade his whole life long and never be asked to receive or deliver a bushel of any kind of grain by simply transferring his contracts from *one* month to another as they near the time of delivery.

The grain crop of the year 1901, as per government official report, was:

Wheat	721,318,000	bushels
Corn	1,359,354,000	bushels
Oats	659,498,000	bushels
Barley	70,000,000	bushels
Rye	23,598,378	bushels
Making a total of	2,833,768,378	bushels

of grain raised in the United States last year.

The Chicago Board of Trade during the year 1901 had 300 business days. Assuming that each member represented a trading business of 25,000 bushels per day (and this estimate is extremely light, as your honors must determine by reading the evidence of the amounts traded in by various houses), it would make a total amount traded in during the year for future delivery of fifteen *billions* of bushels, or over five times the total crop of the United States. This statement alone is sufficient to show the absurdity of the claim that it was the intention of the parties to these contracts to make deliveries when such contracts were entered into. It would have required an elevator capacity to handle this grain of ten times that now in Chicago, and it would require a clerical force in the offices of the members of the Board of Trade almost ten times greater than they have at present, and aside from this it would simply have been impossible for these houses to have kept track of these contracts and received and delivered them at maturity. The business would have to be done on differ-

ent lines and different methods to handle any such amount of property if the actual grain were delivered and received on contracts. This is the first proposition. The next one is that not all the railroads in the United States that run into Chicago could have handled their other business and brought this quantity of grain to Chicago, had it been available, while in truth if every bushel of grain that was raised in the United States had gone through Chicago, it would have been necessary to have handled it five times over in order to make these deliveries. The testimony shows that during the last year (and including a corner in May corn, when prices were inflated to an unnatural degree and unusual deliveries were made on May contracts) not to exceed forty million bushels were delivered during the whole year on contracts made in the pits on the Chicago Board of Trade for future delivery.

To make clearer this system of grain business as done by what the Board of Trade calls "cash houses," which includes elevator owners, corn cribbers, millers, and men engaged in shipping cash grain, the evidence shows that the almost universal custom is to buy this cash grain all over the West, and as fast as they buy it, protect it by what they term a "hedging" sale on the Board of Trade, this hedging sale serving for them a double purpose in that it secures to them the profit that they have made between the market value of the cash property they have just bought and the price they paid for it, and in securing them against any loss that might occur to them through their owning this cash property should the market decline. In the case of elevator men who do a storage business, the hedging sale also performs another service, namely, enabling them to make the carrying charges on the grain in store. Illustrating this, the price of cash wheat yesterday in Chicago, that is No. 2 spring wheat, contract grade, was 75½c, while the July price sold at an average of 77c during the session, making the difference between the value of cash and value of wheat for July delivery 1½c. Assuming that the elevator people bought this wheat yesterday in the country at one cent under the cash market value of it and sold it for July at 1½c over the cash value of it, this shows a carrying charge, or elevator profit, of 2½c per bushel to carry the grain from now until July. It would be a

reasonable proposition to assume that the elevators would constantly make this transaction, and then when July gets here (the same conditions obtain between July and the future month that obtain between the present and July at this time). The elevator man will not deliver his wheat on this July contract, but he will buy in his July contract and sell September wheat, which at that time will again be a premium of 1½c to 2c per bushel over the cash price on July 1st. If at any time between these deliveries he gets an offer for export, or from mills, which shows him a better profit to part with his wheat than to carry it in the elevator, he will sell it and buy in the short sale on the board. This same proposition is true of corn and oats, and that it must be true we again call your attention to the fact that *if the price of grain in the pits* in Chicago was as *good* a market to *sell on* as the country usually affords, the result must be that grain would *never get beyond Chicago.* It would simply pile up in the elevators there, as no grain handler would bother with shipping, railroad rates, and the thousand and one annoyances that are connected with this business, unless by so doing he could get a larger profit out of the business, which, of course, means a higher price at which they sold their property than they could obtain by delivering it on a Board of Trade contract. This proposition is unquestionably true, and consideration and investigation of the testimony will convince that no other proposition regarding the business could be true, as the business could not be carried on from month to month and from year to year except on conditions as above outlined.

The above explanation clearly shows that the intention on the part of these grain men with their hedged trades is not to deliver on these hedged contracts, and their intention cannot be to deliver when the trade is made for the reasons above stated, and the only time they do deliver on these contracts is when the market gets into an abnormal condition, when somebody on the Board of Trade is engaged in another illegal business, namely, the attempt to corner the market by which prices are inflated in this particular place to an unnatural and unusual extent, and only then does the testimony show that any considerable amount of grain is ever de-

livered on these contracts. The report of the secretary of the Board of Trade, filed as an exhibit, shows that there went through Chicago last year two hundred and forty-five million bushels of grain, and there is no evidence anywhere to show that forty million bushels of it was ever received or delivered on contracts made for future delivery on the Chicago Board of Trade.

The Chicago Board of Trade issued a statement showing that there was received in Chicago during the year 1901:

Wheat	51,197,870 bushels
Corn	84,163,637 bushels
Oats	90,632,152 bushels
Rye	3,244,324 bushels
Barley	15,996,670 bushels
Making a total of	245,234,653 bushels

of grain that was received and sent into consumption through Chicago. The testimony shows that they *sold nearly seven times as much* grain on the Chicago Board of Trade as was raised in the whole United States, that they delivered on these contracts *not to exceed forty million bushels* and that of the cash grain that went into Chicago during this time, *not one-sixth* of it was ever delivered on future contracts made by the Board of Trade."

"Another interesting fact is shown, that while these enormous amounts are constantly traded in for future delivery on the Board of Trade, that even the actual grain that is handled through Chicago amounts to less than the total crop of either of the States that are immediately tributary to Chicago and are, of course, the Board of Trade's biggest customers. Iowa raised in 1901:

Corn	209,250,000 bushels
Wheat	18,925,000 bushels
Rye	1,662,035 bushels
Oats	108,710,000 bushels
Barley	9,832,958 bushels
Making a total of	348,385,993 bushels

for the Iowa grain crops, or over one hundred million more than the total receipts of grain at Chicago during the same time, and three hundred million bushels more than the actual deliveries of grain made on future contracts on the Chicago Board of Trade.

"Illinois raised in 1901,

Corn	155,926,000 bushels
Oats	93,229,000 bushels
Wheat	26,701,000 bushels
Rye	1,268,472 bushels
Barley	330,550 bushels
Making a total of	277,455,022 bushels

of all kinds of grain, and thirty-two million more than was received in Chicago, and two hundred and thirty million more than was delivered on contracts for future delivery on the Chicago Board of Trade."

In view of these facts and these statistics, is it not an absurdity for the complainants to say that these contracts are made with an intention to deliver when, from the character of the business done, it is absolutely an impossibility that such deliveries should be made, and it is a fact that no provision whatever in either the elevator capacity nor the methods of doing business on the Board of Trade are in any way adequate or sufficient to handle any such amount of property were there an effort or an intention toward delivery. On the contrary, we call your Honor's attention especially to the fact that there is absolutely no provision whatever made for deliveries of grain on the Chicago Board of Trade, other than in almost any manner that a party having it may choose to deliver it. The testimony shows that the cash transactions on the Chicago Board of Trade are made without reference to any special hours and are made at tables, and on the floor, and off from the grain pits where the big trading is going on for future delivery and where these quotations originate which are the subject matter of this suit. Quite the reverse to this proposition are the methods and rules and appliances created and inaugurated by the Board of Trade for the *cancelling of contracts.* The Chicago Board of Trade clearing house is the most complete, highly evolved piece of cancelling machinery that was ever introduced into the commercial world. A study of its operation and the rules of the Board of Trade under which it operates shows conclusively that all the business done on the Board of Trade from day to day and hour to hour (except the infinitesimal part of it which results in actual deliveries) is canceled at one hour

and at one price for the whole transactions of the day. If the combined trade to-day in the pits of the Chicago Board of Trade amounts to fifty million bushels, it necessarily follows that fifty million bushels are tomorrow "rung up" and cancelled at the settling price arbitrarily fixed by the board of directors without any further trade between the members whatever, and while the members make the initial contract, the clearing house does the rest and cancels them without any further trade or any further personal negotiations regarding such trades as between members. This is also a truth that must be beyond question, because, were not this so, these contracts would not settle, and when delivery day arrived, instead of having, as they do, still open a few million bushels to be delivered, there would be billions of bushels open on the books of the various members of the Board of Trade and the business of the board would be absolutely congested and stopped in the frantic effort to receive and deliver and pay for this property. The clearing house performs a double service for the members of the Board of Trade. It relieves them of the necessity of making direct settlements, and it also relieves them of one-half the trading that would be necessary did every man settle his contract with each other man, as is usual in the general business done in the commercial world. To illustrate this, if A has five thousand bushels of wheat bought from B and five thousand bushels of wheat sold to C, in order to close these contracts it would be necessary for A to make either a delivery to C and receive the wheat from B, or to cancel those trades with each of these men, but the clearing house steps in and you never are obliged to see either B or C again regarding these two open contracts. A puts in his claim with the clearing house for a profit as against C to whom A has the property sold, if the contract shows A a profit, or A notifies the clearing house that A owes B, if the contract shows a loss to A, and A receives from the clearing house the profit he made in the transaction, or he sends the clearing house his check to pay the loss he made in the transaction and that forever settles these two trades A had with these two men, and in which he *had only one-half of each contract on the board.* In other words A had agreed to receive from B a certain amount of wheat and

had agreed to deliver to C a certain amount of wheat, *neither of which contracts he carried out*, and never again spoke to B or C or made any negotiations whatever with either of them regarding the above hypothetical transaction.

This estimate as to deliveries in proportion to the amount of grain handled by the cash houses of Chicago is very closely borne out by the testimony of the manager of Armour & Company. He testified that they handled fifty million bushels of grain, hedged it all on the Chicago Board of Trade, and delivered about one-sixth of it.

"It must also be borne in mind that there are not to exceed twenty-five large grain handlers members of the Chicago Board of Trade, and the balance of 1,975 members of the Board of Trade are engaged in what is known and denominated there as "speculative business," and the distinction made all the time between a cash handler and the broker who trades for future delivery being, in Board of Trade parlance, "cash houses" and "speculative houses." Mr. Warren spoke very truly when he told Mr. Christie, as recited in the evidence, "that sixty men could do all the cash business and that there were eighteen hundred of them trying to make a living up there."

Suppose the Kansas City Stockyards Company concluded to sell cattle and hogs for future delivery, and in order to do this effectively, they took the four months of May, July, September and December as the delivery months during the year. Suppose they started in the first day of January and bought and sold daily for delivery in May one hundred thousand head of hogs and cattle, and that each night after the close of business they cancelled off these trades made during the day, contracts that amounted to ninety thousand head, and to facilitate the cancelling of these contracts, they inaugurated a clearing house, receiving and paying differences on these cancelled trades through this clearing house, and the only function of the clearing house being to facilitate the cancelling of these contracts (this clearing house being an elaborate piece of commercial machinery expensively maintained), and that no facilities or arrangements were made for *delivering and receiving the actual hogs and cattle* other than are open at the present time, namely, some pens to put them in, with a capacity not equal

to the caring for one-tenth of the hogs and cattle daily contracted for future delivery on the exchange. Suppose they continued this business year in and year out and an investigation of it showed that not more than one head of live stock was ever delivered on contracts that had been made for the delivery of three thousand, would this Court hold that these people under these circumstances intended to receive and deliver the property so bought and sold, when it was beyond human possibility that the delivery of this property could be made as contracted for, and would you not be irresistibly forced to the conclusion that the Stockyards Company *"kept a place,"* and that their clearing house system and their rules governing the cancellation of these trades were of such a character that it clearly proved *"they did not intend to receive or deliver"* the property so bought or sold?

Mr. Warren, the president of the Board of Trade, testified that if the bucket shops were closed the Board of Trade would get more business, because the trades made in the bucket shops would be executed on the Board of Trade. Mr. Warren, president of the Chicago Board of Trade and Mr. Robbins, its attorney, have for the last four years labored earnestly and strenuously to show that all contracts made off of boards of trade are mere bets and gambling transactions. Does not Mr. Warren's admission that the Board of Trade would be benefited if these same bets were placed on that board really stamp the transactions of that board, under his own testimony, as like in character to those transactions made in offices off the Chicago Board of Trade? Further, if it is true, as charged by these complainants, that all transactions in grain and provisions made for future delivery off the Chicago Board of Trade are mere bets, is it not an absurdity for the Board of Trade to claim that these bets could in any way effect *legal* contracts made on that exchange? The argument advanced that this speculation is legitimate and necessary because of the support it gives to the market, is absurd, as any student in political economy well knows, if he is not advanced further than the primer in that study, that *prices go up and down in response to the inexorable law of supply and demand,* and it needs but to call the Court's attention to the prices of corn in

1900 as compared with the prices of corn in 1901 to show how quickly and absolutely this law operates. In the year 1900 we raised 2,105,102,516 bushels of corn, and the average price of corn during that year was not above thirty-eight cents per bushel. In the year 1901 we raised 1,359,354,000 bushels of corn, and while the average price for corn on this crop cannot be computed, as the crop year is not completed, since August 1 of last year the average price of corn has been close to sixty cents per bushel, because of the shortage of 745,748,000 bushels in this year's production. We wish to call attention to the fact that the transaction for future delivery on the Chicago Board of Trade from day to day and from hour to hour must be exactly equal. Every time a man buys anything on that exchange, some other man *must sell* it, consequently, the buying and the selling on the exchange are forever even, and if it were not true, as above stated, that *supply and demand* caused the fluctuations in the market, prices would absolutely, so far as the Board of Trade is concerned, be at a standstill, because of the reason above stated. There can be no purchase without a seller, and as the buying and selling are always equal, there could be neither an advance nor a decline in the market. This proposition takes out all the argument by the board as to the effect of these contracts on the board. Without the outside influences which make prices go up and down (finally and primarily the law of supply and demand), the markets of the Chicago Board of Trade would never fluctuate one-quarter of a cent per bushel on the price of any commodity there traded in.

We wish to further call your attention to the Board of Trade's definition of a bucket shop, as evidenced by Mr. Warren's testimony and by the contract which they have and require to be signed by every house to whom they allow the Board of Trade to furnish their quotations. After reciting many things which they prohibit (but which they permit daily and hourly on the Board of Trade), they then make the supreme test of bucket shop, or no bucket shop, to be as to whether or not the contract is made on the Board of Trade or off the Board of Trade. If made on the Board of Trade, it is all right and legitimate, but if off, it is gambling, and wicked, and a bucket shop transaction. The Christie

Grain & Stock Company might have been allowed to use the Chicago Board of Trade grain quotations if they had signed this iron-clad agreement not to make a trade for future delivery anywhere on earth except on the Board of Trade. Because they would not agree to do this the Board of Trade immediately denominated them as a bucket shop and seeks this injunction, entirely ignoring the definition of a bucket shop made by the statutes of both Illinois and Missouri, and asserting to themselves the right to define what are and what are not legal transactions, and to act as judge and jury as to business done by the Christie Grain and Stock Company, and deciding that they are a bucket shop without even making any inquiry as to their methods or the character of business which is done in their house.

We claim that it is clearly shown that the corporation, the complainant in this case, the Chicago Board of Trade, *"keeps a place," "maintains a clearing house,"* and makes rules and enforces the same to facilitate the buying and selling of grain and provisions for *future delivery without any intention to receive or deliver the same,* and its members under these rules are by compulsion forced to cancel and "Ring up" these deals without any reference to delivery, and to settle the same from day to day through the clearing house, and that the whole scheme is in violation of the statutes of both Illinois and Missouri.

Counsel for complainants in their brief and oral argument constantly kept referring to the definition of bucket shop as defined by the United States revenue laws for taxation, but that has nothing to do with this proposition whatever. It is the statutes of the states of Illinois and Missouri that we are discussing; and, those statutes provide that a party who keeps a place wherein is permitted the buying and selling of grain or commodity for future delivery without an intention on the part of the parties to deliver the same when sold or receive the same when purchased, shall be adjudged the keepers of a bucket shop and are subject to punishment; but, even under the definition of the United States government as to revenue tax as to what constitutes a bucket shop we say that the Board of Trade of Chicago is bucket shopping and producing the

quotations as the result of bucket shopping because one of the provisions of that law in defining bucket shopping is the settling of deals or closing them out when prices shall reach a certain figure fixed by the boards of trade.

Now, we find from the testimony in this case that the Board of Trade of Chicago was engaged in this very business because we find that every day it fixes a settling price, through its board of directors, and posts the same in exchange hall and in the settling room and provides that all settling done upon the speculative business of the day shall be settled and adjusted according to its fixed settling price arbitrarily fixed by the Board of Trade and posted up by it, which, even according to the United States government's revenue definition also conclusively shows that they are carrying on the business and aiding the carrying on of the business producing the quotations in violation of the law.

We wish to call your Honor's attention to the Board of Trade clearing house report filed as an exhibit (page 112), showing the amounts cleared and differences paid through the clearing house to have been during the year 1900, $62,227,165.25. This amount, you must understand, is simply the amount of differences between the profits and losses paid in these trades cancelled through the Board of Trade clearing house. The Board of Trade makes *no* report of *actual* grain delivered and paid for on these contracts made for future delivery. The testimony shows that not to exceed forty million bushels in quantity and not over twenty-six million dollars in value were delivered on these speculative contracts during the year 1901, and we again suggest that this showing is another unanswerable argument to the proposition that they do not intend to receive or deliver when the total value of the cash property delivered on these contracts during the year is less than one-half of the amount of money paid in profits and losses on the transactions they are supposed to represent.

In this connection we desire to call the Court's attention to the case of "Puts and Calls and Option Dealing."

113 Ill., 228, *Pearce v. Foote.*

And also to the case

Sobey v. People, 134 Ill., 66.

ULTRA VIRES.

Now, another proposition to which we wish to invite the Court's attention is found in this, that the Board of Trade was incorporated as a charitable institution and not as a business institution or a business corporation, and the act of the legislature incorporating it found in the rules herewith on page 7 provides:

"Said corporation shall have no power or authority to do or carry on any business except such as is usual in the management of boards of trade or chambers of commerce, or as provided in the foregoing sections of this bill."

Then we find in defining this that the Board of Trade itself, in its objects, defines them as follows:

"To maintain a commercial Exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and to disseminate valuable commercial and economic information . . . " So that it is seen that this corporation was not originally incorporated for the purpose of carrying on business or to monopolize the grain business of the world, but, as rather a charitable institution, and one of its purposes is declared to be that for which for thirty years it has been doing, to acquire information in reference to the grain markets and to disseminate the same.

Instead of, however, confining itself to a fraternal and charitable business and mutual welfare of its members, we find that it has now become one of the wealthiest and most gigantic corporations of the age; that it is owning property in excess of its charter provision to the extent of the value of many millions of dollars; that it has gone into the business of subsidizing telegraph companies and trying to sell its market quotations to the public carriers for thirty thousand dollars a year; and, it has become a pecuniary corporation, and is now engaged throughout the country in attempting to monopolize the entire speculative grain business of the United States, and in its "inculcating its principles of justice," it has gone into the injunction business, first, having made a con-

tract with the telegraph company by which it seeks to prevent anybody from receiving any information in reference to the public markets unless such parties shall be first approved by the Board of Trade, and then going out to compel everybody in the United States to come in under its contract and submit to the dictation of the Board of Trade through its members; place all of their bucket shop transactions through members of the Board of Trade, or else go out of business.

And thus it has become, and if its scheme now in hand by this injunction system shall succeed, it will be the most gigantic monopoly that the country has ever heard of, and no dealer in futures, whatever his object or purpose, can be permitted to transact business unless he goes to some one in the Board of Trade of Chicago and places his deals there. This is the "inculcating principles of justice" proposed by this Board of Trade under its "charitable" charter provision.

Now we maintain that the contract in question and the situation of the Board of Trade as well as the telegraph companies, places them in such a position and relation as that their doing and transactions are *ultra vires* of the corporation, and for that reason, if no other, they have no standing in a court of equity.

101 U. S. 71, *Thomas v. Railroad.*
41 M. A. 665, *Bowman v. Mooney.*
57 Ind., 495, *Western Union Tel. Co. v. Ferguson.*
99 Ill., 487, *Cope v. District Fire Ins. Co.*

Respectfully submitted,

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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 224.

THE BOARD OF TRADE OF THE CITY OF CHICAGO,
PETITIONER,

v.

CHRISTIE GRAIN AND STOCK COMPANY ET AL.

REPRINT OF BRIEF AND ARGUMENT FOR THE CHRISTIE GRAIN AND STOCK COMPANY ET AL. IN THE COURT BELOW.

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The following is the brief for the Christie Grain and Stock Company et al. in the court below:

United States Circuit Court of Appeals,

EIGHTH CIRCUIT.

No. 1805.

CHRISTIE GRAIN AND STOCK COMPANY ET AL.,
APPELLANTS,

v.

THE BOARD OF TRADE OF THE CITY OF CHICAGO,
APPELLEE.

BRIEF AND ARGUMENT FOR APPELLANTS.

Statement of the Case.

A very full statement of this case is made by our colleagues in their separate brief filed herein, and it would be redundant and useless for us to reprint it here. For the purposes of this argument we adopt the statement of the case made in the brief of Messrs. Harkless, O'Grady & Crysler. To aid in

our argument, however, we will briefly restate the substantial elements of this case and the grounds of contention.

The appellee by its bill seeks the aid of a court of equity to prevent the appellants from using the current quotations of the Board of Trade of Chicago, made by transactions upon the board. These quotations arise from speculative sales and purchases of grain and provisions by brokers and agents for their principals. It is of necessity admitted that when these quotations are received and used by the appellants, the transactions have already taken place upon the board of trade and the reports of the same have already been delivered to the telegraph companies for transmission over their wires. The board seeks to follow the quotations into appellants' hands and assert a property interest in them of so absolute a nature as to warrant the interposition of a court of equity to prevent the use of them in appellants' business.

The bill in this case industriously shows, first, the magnitude of the operations upon the board of trade and their essential significance and importance in the transaction of the business of dealing in grain and provisions throughout the United States, and particularly in the territory where appellants are engaged in business. The court, of course, will take judicial notice that Kansas City is a large center of trade and commerce, that it has a large local grain and provision market, and it is an asserted fact by the appellee and admitted by the appellants that all the dealings in the commodities in question are controlled and governed by the result of similar transactions made upon the board of trade in Chicago.

The bill sets out the purposes of the board of trade and its incorporation, and the paragraph from its charter defining its purposes and correlatively imposing its duties is as follows:

"To maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate

the speedy adjustment of business disputes; to acquire and disseminate valuable commercial and economic information and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits."

The record discloses that for a long time after the organization of the board and down to comparatively recent times the telegraph companies were allowed to freely compile, collate, and transmit to traders everywhere who might desire to use it the intelligence of the transactions upon the board of trade.

The object of disseminating this intelligence freely in the beginning of the business was obviously to increase the trade upon the board and to induce people to engage in such trade through the brokers who were members of the board of trade, and to thereby augment its importance as a factor in the commercial world. By this means the trade in these commodities was in a large degree concentrated upon this board, the unexampled growth of the city of Chicago as a general market incalculably aiding in this behalf. Independent trading, however, based upon these quotations began to assume large importance in many growing commercial centers of the West and South. There were undoubtedly a large number of what are familiarly termed "bucket-shops" in many localities, which carried on an illegitimate business, using these quotations merely as gamble use the markers upon the gambling board. The moral delinquencies of such persons, however, have in most of the States been corrected, or sought to be corrected, by stringent laws denouncing such business as unlawful and punishing those engaged in it as misdemeanants. But there have been and are now established numerous independent commission houses trading among their own customers in the commodities in question upon a plan as legitimate and honorable as that of the brokers constituting the board of trade. It is conceded in this case that appellants are within this class.

There were thus two classes of people engaged in the legitimate business of dealing in grain and provisions in this country, namely, the brokers of the Board of Trade of Chicago and those of other boards having alliances with that board and independent brokers and commission houses in no way connected with appellee. The appellee discovered that these independent dealers were securing business which otherwise would come to the brokers upon the board of trade. Thereupon it sought to destroy all such independent business by passing a rule or order forbidding the dissemination of the quotations arising from transactions upon the board. It offered as a pretext for this drastic rule its desire to suppress so-called bucket-shops and to prevent unfair trading throughout the country. This policy seems not to have accomplished either the actual or the pretended purpose of the board. Notwithstanding the order, quotations were disseminated practically as freely as ever.

In 1892 it threw open its doors to the telegraph companies once more, without let or hindrance, and permitted them through their own agencies to collect these reports and transmit them to whomsoever wanted them and would pay for them. The board of trade received nothing for these quotations. This continued for eight years. In other words, from the organization of the board of trade down to 1900, with the exception of two years, appellee voluntarily and freely disseminated this information through the telegraph agencies to the public, unreservedly and without condition. Any person desiring them could obtain them by an arrangement with the telegraph company for such service. In brief, these quotations were given to the public without discrimination from 1858 to 1890 without even an assertion by appellee that it had any peculiar right of property in such quotations. In 1890 its claim went simply to the extent that it could close its doors against the right of the public to acquire them at all.

This position it voluntarily abandoned in 1892, and for

eight years thereafter asserted no proprietary interest in the quotations. In 1900, for the first time, it exacted of the telegraph companies, as a condition to the use of the reports, a contract. This contract required the telegraph companies to pay to the board of trade $30,000 a year and to further submit to the absolute control and direction of the board as to all persons who might be permitted to receive them. We will discuss this contract at length when we reach that branch of our argument.

The bill proceeds upon the primary assumption that the quotations constitute property, the dissemination of which the complainant has a right to regulate at its will; that the appellants' use of them injuriously affects the board of trade, because appellants are engaged in the bucket-shop business; that the board has a right to suppress this illegal business by refusing the use of the quotations; that if it should be deprived of such dominion over its so-called property, it would be injured by loss of prestige and support on the part of the public which would connect it with such bucket-shop business. But it is an admitted fact in this case that this charge as to the character of appellants' business is untrue. The answer expressly and positively denies the allegations in that respect. Not a syllable of proof by way of deposition or affidavit was presented to the court in support of this all-important ingredient to the bill. Upon argument below, the charge was practically withdrawn by complainants' counsel, and will not be repeated here.

The case rests, then, if it can anywhere obtain support, upon an absolute and unrestricted right of property in these quotations by the board of trade, that its control in the regulation and distribution of them may not be questioned or reviewed, and that its contract with the telegraph companies is not subject to interference by the courts, acting for the public at large. In other words, that the board of trade may at all times determine and be the final arbiter of who shall or who shall not receive such quotations, and this with-

out reference to the legitimacy and fairness of the business engaged in by the applicant. It results, from this position, that the board asserts the right to capriciously and invidiously control an instrument of interstate commerce in the exercise of its public function, namely, in the dissemination of information and knowledge which the highest court of the State of appellee's creation has declared to be impressed with a public use, and which must be furnished to all demanding without discrimination.

The bill suggests two injuries to be apprehended: one an injury to reputation, unless it can prevent the receiving of these quotations by bucket-shops, and the second a pecuniary injury of such peculiar character and so curiously elaborated and explained that we cannot restate it in a briefer or any form of words, but must quote it (p. 6):

"That your orator realizes from the sale of said quotations in the city of Chicago alone, more than $10,000 per year, but that said quotations are of such a peculiar kind of property that their value and your orator's ability to sell the same depend upon your orator's retaining the power to confine the transmission and distribution of said quotations to such telegraph companies, and other distributing agencies, as will contract therefor with your orator, and the value of said quotations to your orator will be much impaired, if not wholly lost, if persons are allowed to receive or take without right, or surreptitiously, or by theft, and when so acquired, to use the same or distribute them to the public for use—the value to your orator of said quotations depending upon your orator's preventing the said quotations from being generally or surreptitiously published in a way to make them free to the public; for if any telegraph company or other person is permitted to promptly acquire said quotations surreptitiously or by theft, and without paying your orator therefor, the telegraph companies contracting with your orator for said quotations and agreeing to pay your orator therefor, will be put at such a disadvantage in competition with such telegraph companies or persons acquiring the same surreptitiously and without paying your orator therefor, as to prevent said contracting telegraph companies from long continuing to purchase said quotations from your orator."

As to this last ground of relief, it is needless to say no
oof is or could be taken. At most, it is a deduction of the
eader which certainly is not obvious from the premises
awn. It would occur to the ordinary mind that exactly
e opposite result would follow from the increased demands
on the telegraph companies for these quotations.

It appears, then, that of these two foundations for relief
ted in the bill one is non-existent, namely, the bucket-
opping business, and the other is so shadowy, vague, and
leterminate as to be evanescent. The truth is that in this
important particular of pleading the draftsman of the bill
s not dealt with frankness, but has concealed the real
tive of this lawsuit and the persistence in its prosecution.
at motive, however, does not lie so far below the surface
hings as not to be discoverable, and a careful reading of
contract makes it palpable that its object, as well as the
rpose of this lawsuit in furtherance of its terms, is to create
onopoly in the board of trade in dealing in grain and
visions and to suppress all independent business, to com-
commission merchants to pay tribute and brokerage to
members of the Board of Trade of Chicago. It is absurd
ontend that this gigantic corporatien would be carrying
litigation near and far in many of the courts of the West-
States for the sake of enhancing petty earnings which it
ives from the telegraph companies for these quotations,
ch for more than forty years it cheerfully gave to the
lic for nothing; and it is equally absurd that it is moved
the high design of vindicating the bucket-shop laws of
various States.

Ve do not deem it necessary to repeat in terms the assign-
nts of error upon the record, because we shall confine our
uments to the errors which we believe to have been com-
ted by the court below in overruling and refusing to be
erned by the following propositions of law, the force and
lication of which to this case was by the court errone-
y denied. These are presented on the record, and from

the face of the contract set forth in appellee's bill, and the establishment of them is necessarily fatal to appellee's right of recovery.

Specifications of Error.

The court erred in denying the following propositions of law which are asserted by the appellants:

I.

The board of trade has not, nor did it ever have, any right of property in the quotations resulting in transactions by its members upon the board.

II.

Assuming the right of property in the board to these quotations, they have from long free and unrestrained usage become a matter of general commercial necessity, and have become impressed with a public interest and use. The board of trade is estopped from discriminating with reference to such public use.

III.

The contract with the telegraph companies, pleaded in complainant's bill, is not in the nature of a reasonable regulation of the use of such quotations, but is an unreasonable and restrictive measure for the purpose of creating a monopoly, which monopoly will not be furthered and protected by a court of equity, nor aided by the preventive remedy of injunction.

IV.

The contract made between the appellee and Western Union and Postal Telegraph Companies, and sought to be

enforced according to its terms in this suit, is violative of sections 1, 2, and 3 of the act of Congress of July 2, 1890, known as the Sherman anti-trust act.

V.

The contract is void as being a regulation of interstate commerce and a control and unauthorized direction of an instrument thereof, and is prohibited by section 8 of article I of the Constitution of the United States.

ARGUMENT.

The quotations not property, nor can they be impressed with a right of property by the board of trade.

We are bound to assume that the positions taken in argument in the court below by the appellee will be renewed here. We quote from a printed brief in another case which was filed by the complainant in the court below (p. 18):

"It is not claimed by appellants' counsel that this copyright law covers these quotations or protects the property right in them against purloiners. A perusal of the law will show that it includes, and under the Constitution could include, only authors and inventors. * * * (After copying the copyright statutes.) (P. 19:)

"From these and other provisions of the copyright law, it is perfectly clear that these quotations are not the productions of an author; that Congress had in view, when enacting that law, things of a permanent character and value, not things of an ephemeral character and value, such as are these quotations; and that the copyright law has no application to and affords no protection to the property right in these quotations * * * (p. 20).

"Nor does the common law directly cover these quotations. Commercial exchanges and the prices made thereon were unknown to the common law. The exchanges themselves are of recent date, and the products of the modern development of commerce. * * *

"They are a new kind of things. They represent new conditions calling for new law."

This vague and indefinite description of this claim of property interest in the brief in question gains no illumination from the allegations of the bill. In the bill appellee says (p. 5 of the Record):

"And the *knowledge* of the prices thus made on said transactions during said market hours upon said exchange have

become a species of property of such large value to your orator that telegraph companies are willing to pay your orator large sums of money for the privilege of receiving instantaneously said quotations and selling the same to their customers."

And again, on page 6, in the recital of the pecuniary injury which the appellee claims to apprehend and which we have heretofore quoted, it is said:

"For if any telegraph company or other person is permitted to promptly acquire said quotations surreptitiously or by theft, and without paying your orator therefor, the telegraph companies contracting with your orator for said quotations and agreeing to pay your orator therefor, will be put at such a disadvantage in competition with such telegraph companies or persons acquiring the same surreptitiously and without paying your orator therefor, as to prevent said contracting telegraph companies from long continuing to purchase said quotations from your orator."

From this hazy and obscure definition of its property rights by the counsel of appellee is to be gathered the claim, if any clear conception can be gathered, that the property consists in the *knowledge* of these individual transactions and the resulting market quotations. The court which awarded this injunction has an entirely different notion of the element of property in the board of trade entitled to judicial protection. It says (p. 956 of the Record):

"The board of trade has at least a qualified property right in the *records* of the transactions between its members and in the distribution thereof. Such *records* constitute the quotations in controversy in this case. That the quotations are the subject of a property interest and that the complainant has some right with reference thereto is generally recognized by the decisions of the court."

Appellee's claim goes further and asserts that there is an element of property in the knowledge of the multitudinous facts which such record, if any were kept, must contain.

The failure, therefore, to keep such record could not exclude the existence of such facts nor diminish the property right in such knowledge. The vague and uncertain assertion and description of what constitutes the property right and interest and the differences between the court and counsel in this respect illustrate at the outset the extreme difficulty, if not impossibility, of finding any of the tangible ingredients of property in legal contemplation in these quotations.

Property of this character, if existent and definable at all, must rest in analogy, at least, to literary property and inventions, the product of the human mind. If it cannot find some support by analogy in such element of property, then it is too intangible and evanescent to be apprehended by the law. That this deduction is fair and just is evidenced by the argument of appellee, which draws all of its analogies from judicial determinations and definitions of property of this character.

There are two theories of ownership in mental creations which are radically opposed to each other and which have been and probably always will be the subject of vigorous contention. The one theory is that intellectual creations are property like unto other species of property and belong by right of the highest possible title to their creator, his heirs and assigns, forever. It is contended that, no matter whether published or unpublished and to the end of time, they are to be secured to the producers and their successors to the same extent as other species of property; that the public has no more justification to take away or impair the originator's property in his mental product, either in law or in morals, than to deprive him of any other property. Many eminent jurists of England adopted this theory and it finds great support with the text-writers. However attractive it may be, it has failed to prevail with the courts.

The other theory, and the one which has been generally accepted by the courts, is that the producer of a work of the intellect has no natural property in it and can only enjoy

such rights in respect thereto as the public may choose to confer. Under this theory a writing and work of art or a musical composition may be said to be a contribution to the common stock of knowledge and enjoyment of mankind, a labor for the benefit of civilization, which the public should generously reward, to be sure, but which is, after all, a heritage of the human race. Even Lord Mansfield, the great advocate of the opposing theory, is not oblivious to this view. In *Sayre v. Moore*, 1 East, 361, he says:

"The rule of decision in this case is a matter of great consequence to the country. In deciding it, we must take care to guard against two extremes, equally prejudicial—the one that men of ability who have employed their time for the service of the community may not be deprived of their just merits and the reward of their ingenuity and labor; the other that the world may not be deprived of improvements nor the progress of the arts be retarded."

It is further to be observed that even the exponents of the first theory concede that this right does not exist in the inventor, but only argue for it in favor of the literary author. It is hard to reconcile this distinction with any idea of fairness or logic. Certainly the ideas of the inventor are no less valuable than those of the author. If the one is entitled to property, it is hard to see why it should be denied to the other.

The great case of *Millar v. Taylor*, 4 Burr., decided by the King's Bench in 1769, presents the arguments in favor of these opposing theories of property. All the justices taking part in that decision gave their individual opinions at length, and they have furnished the armory from which all advocates of the one or other proposition have drawn their weapons since. The fundamental principles of property are there discussed with that thoroughness and clearness of preception which characterized that age of judicial giants. Mr. Justice Willes, Mr. Justice Aston, and Lord Mansfield held that at common law a right of literary property exists which

is not destroyed by publication, and the duration of which was not diminished by the statute of 8 Anne, the first English copyright law. Mr. Justice Yates took the dissenting view in an opinion of great length, and, as said by the Supreme Court of the United States, "with an ability if equaled, certainly not surpassed" (*Wheaton v. Peters*, 8 Pet., 226). The question was not settled by this decision in England, and, in 1774, the House of Lords distinctly overruled the doctrine of the majority opinion of *Millar v. Taylor*, and declared the law to be that property right in literary productions, after they are once published, does not exist at common law, but depends upon the copyright statutes alone.

See *Donaldson v. Beckett*, 2 Bro. P. C., 129, 138.

There is said to be a fuller report with all the opinions and speeches condensed in 17 Hansard's Parl. Hist., 953. It is curiously to be observed that Thompson's "Seasons" was the publication involved in both cases.

This rule has prevailed ever since in England.

See *Jefferys v. Boosey*, 4 H. L. Cas., 815.

In the United States the first theory alluded to has never received judicial recognition. From the outset the courts have consistently held that after publication the only rights of an author in his production are those secured by copyright statutes. In other words, that the effect of the copyright act is to create a right of property which did not before exist.

Wheaton v. Peters, 8 Pet., 223.

Mr. Justice Thompson filed an elaborate dissenting opinion in that case, which has been much quoted by the advocates of the unrestricted property right. It is to be noted, however, that the learned justice recognized the full force of the decision, because in the case of *Clayton v. Stone*, Fed. Case

2872, decided by him shortly afterwards, he commenced his opinion as follows:

"Copyright was formerly considered to be founded on common law, but it can now only be viewed as a part of our statute law."

"There can be no doubt of the authority of Congress to legislate on the subject of literary property, and to prescribe the terms upon which copyrights shall be granted, and when it has so legislated it may be truly said to create those rights under the law."

Crowe v. Aiken, 2 Biss., 214.

"The right of action, as well as the copyright itself, is wholly statutory, and the means of securing any right of action in Hubbard are only those prescribed by Congress."

Thompson v. Hubbard, 131 U. S., 151.

"But it is a proposition now so well settled as to be almost axiomatic, that, except so far as preserved to him by statute, when the composer of any work, literary, musical, or dramatic, has authorized its publication in print, his control over so much as he has so published, and of the use which others may make of it, is at an end (*Wheaton v. Peters*, 8 Pet., 591; Drone, Copyright, 101, 574, 577; *Boucicault v. Wood*, 2 Biss., 34; *Mark Twain Case*, 14 Fed. Rep., 728; *Tompkins v. Halleck*, 133 Mass., 32)."

The Iolanthe Case, 15 Fed., 442.

"It must be regarded as settled law in the United States that an author has no exclusive property in a published work except under some act of Congress, and then only when he complies with the provisions of the act."

West Pub. Co. v. Lawyers' Co-operative Pub. Co., 64 Fed., 364.

See also *Stowe v. Thomas*, Fed. Case No. 13514.

As we have said, the justices sitting in *Millar v. Taylor* discussed the rules of property from *a priori* principles. The reasoning in these various opinions of these great

justices is as fully applicable to a just decision of the rights of property in these market quotations as it is to the rights of property in a work of imagination, like Thompson's "Seasons."

The right of property in these quotations, where it has been judicially dealt with and conceded, has been, as we shall presently show, taken for granted by both parties to the controversy. No reference to cardinal principles has been indulged in in those decisions, nor has any court of last resort passed upon it at all. We therefore contend that it is a question at large and undecided and can only be rightly decided by the application of the principles of jurisprudence which were so learnedly considered and argued in *Millar v. Taylor* and cognate cases in England and in this country. We deny that these quotations are or can be made the object of property in any sense.

Of course it follows as a necessary consequence that if it be true that the board of trade does not possess a property right to these quotations, it is in no position to invoke the aid of this court to suppress their free and untrammeled dissemination. This is an obvious proposition which counsel for the appellee himself concedes. It therefore becomes important to analyze this claim of property and apply the test of well-established principles to it.

The board of trade has no property right or interest in or to the knowledge of the quotations as they arise from the transactions of its members upon the floor of the board.

What is the exact claim of the board of trade? What is the object of property here? Is it to the manuscript or slips of paper on which these figures are placed, or is it to the figures themselves? When does the board's property right attach? Is it at the moment the bid is made and accepted? Certainly such must be the contention, else, as there is no

claim that these papers or records on which the figures appear have been appropriated or interfered with, appellee's property has not been injured. The bill answers this (p. 5) to the effect that it is "*the knowledge of the prices* thus made on said transactions."

Quoting from the language of Mr. Justice Yates in 4 Burr., p. 2362:

"The fallacy lies in the equivocal use of the word property, which sometimes denotes the right of the person (as when we say, Such a one has this estate, or that piece of goods), sometimes the object itself. Here the question is upon the object itself, not the person."

We must therefore, in analyzing this claim, go to the very foundation of the quotations, which is the purchase or sale of a commodity by brokers in the pits. At this stage of our argument, then, we shall deal solely with the question of the right of property in the knowledge of these quotations as they arise. The compilation of the knowledge by the agencies of the board of trade and its use by the board of trade occur later and present another and a different question, which we shall discuss when we reach it. We are subjecting this claim of property to analysis with reference to its origin and elements, and for the present we are confining our argument to the knowledge of the transactions as they arise during business hours upon the board of trade.

It thus appears that the object of the property of which appellee claims to be the owner is the mental, evanescent, fleeting impression resulting from a bargain between two men; something which is not and cannot be visibly and distinctly enjoyed; wholly without substance to sustain it. Its whole existence must be in the mind alone. It is incapable of any other mode of possession or enjoyment than by mental possession or apprehension. Paraphrasing the language of Mr. Justice Yates, "safe and invulnerable from its own immateriality, no trespass can reach it, no tort affect it, no fraud

or violence diminish or damage it." Yet these figures are the phantoms which the appellee would grasp and confine to itself, and it is these of which the appellants are charged with robbing appellee. Analyzing this claim more closely, each one of these quotations, disassociated from all the rest, must be held to partake of those essential elements which constitute property, and the time when it necessarily became clothed with those attributes was at the very instant the particular sale was made.

Neither can the magnitude in number of these quotations alter the question. Mere increase of volume has never been a test of property. The air which fills a house can no more be the subject of property than that which fills a bottle, and for exactly the same reasons. If upon final analysis a single one of these quotations does not partake of the qualities of property, neither will all combined partake of those qualities.

We have seen that counsel for appellee concedes that its claim of property is not supported by the copyright statutes, and he further admits "nor does the common law directly cover these quotations." Counsel contends that this knowledge has become a "species of property" which should be recognized at the law from reasons of justice and propriety. Or, as he puts it in his brief, "but after all, what should most control are those broad considerations of the rights of individuals and public welfare which should be the basis of all law." In other words, the court is asked here to find a right of property, not by applying old principles drawn from the common law, but by making new law. In brief, by judicial legislation. The court is here asked to invent a principle of law in order to create and assert a right of the board of trade, and in so doing it is asked to indulge its views as to broad and abstract principles of justice.

The same contention was made in the case of *Millar v. Taylor*, in favor of a perpetual common-law right of authors to literary productions. Mr. Justice Willes, conceding that the principles of common law did not support a right of

property to such productions, nevertheless asserted a property right, because, from abstract principles of justice and propriety, he thought it was manifestly right that such property should be recognized. This attempt to create a property in defiance of the principles of common law and without the aid of a statute, was very properly answered in the later case of *Jefferys v. Boosey*, 4 H. L. Cas., by Lord Chief Baron Pollock, as follows (p. 935):

"In Mr. Justice Willes' judgment (giving a very able, elaborate and learned exposition of the whole subject) he appears to think that, because upon general principles he has satisfied himself of the justice and propriety of an author possessing such a right, therefore by the common law it exists. The passage is a remarkable one, and shows what were his views of the common law, and what, probably, he thought would not be considered strange or novel by the rest of the judges. It is this: He is speaking of the allowance of 'copy' as a private right, and he says 'It could only be done on principles of private justice, moral fitness and public convenience, which, when applied to a new subject, make common law without a precedent.' My Lords, I entirely agree with the spirit of this passage, so far as it regards the repressing what is a public evil, and preventing what would become a general mischief; but I think there is a wide difference between protecting the community against a new source of danger, and creating a new right. I think the common law is quite competent to pronounce anything to be illegal which is manifestly against the public good; but I think the common law cannot create new rights, and limit and define them, because, in the opinion of those who administer the common law, such rights ought to exist, according to their notion of what is just, right and proper. This ground or method of arguing for a common-law right has not been adopted at your Lordship's bar."

The same subject was commented upon by the learned Judge Cadwallader in his opinion in *Keene v. Wheatley*, Fed. Cas. 7644, p. 192.

"Lord Mansfield and Willes, J., in 1769 (4 Burrows, 2398, 2399, 2395, 2396, 2312), and Aston, J., in 1774 (17 Cobb.

Parl. Hist., 980), were of opinion, that even in the absence of confidential relations, rules of decision on questions of literary proprietorship might be deduced from principles of 'private justice, moral fitness, and public convenience.' But Lord Eldon discarded this doctrine (3 Law, J., ch. 209). It has been criticised and condemned by De Gray, C. J. (17 Cobb. Parl. Hist., 990); Lord Camden (*id.*, 998); Pollock, C. B. (4 H. L. Cas., 935, 936), and Lord Brougham (*id.*, 968). Some of those judges conceded that what was manifestly against the public interest might for that reason be rejected from the law. But they all concurred that those who administer jurisprudence cannot on this, or any other subject, create and define rights merely because, in their opinion, such rights ought, according to justice, propriety and convenience, exist. Rules of decision on the subject of literary property, must, therefore, be sought in doctrines of the common law, or must be traced in principles from which its rules may appear to have been derived."

If, therefore, these quotations, originating in the way they do, can be said to be any one's property, the fact of proprietorship, ownership, must find its sanction and support in the existent rules and principles of the common law; and if not property by such rules, or, we might add, if not property, under any system of jurisprudence established by any civil society in the history of the world, then the court is powerless to declare it to be property and deal with it as such.

Of necessity, in seeking an analogy in the common law that may be persuasive upon the court in favor of his contention that these quotations are property, counsel for the board resorted to cases relating to literary property and invention, for with reference to these, and these alone, can it be said in the law that property is created as the object and result of intellectual effort; but tried by this touchstone these quotations are totally lacking in that essential quality.

There are several principles, elementary in their nature, which furnish a conclusive answer to the question now discussed.

The right of property to mental or literary effort rests fundamentally upon the creative faculty, which must have been exercised by the claimant or some one through whom his title is derived.

This is a principle so obviously true that it is found accepted without comment in all of the discussions upon the subject. In the case of literary proprietorship it is the crowning reason urged why the right should be recognized in the author, upon the principle *jus utendi et fruendi*. As said by Mr. Justice Aston in 4 Burr., 2340:

"There is a material difference in favor of this sort of property from that gained by occupancy; which before was common and not yours; but was to be rendered so by some act of your own. For this is originally the author's; and therefore, unless clearly rendered common by his own act and full consent, it ought to remain his."

The origin of this asserted right was put by Mr. Justice Yates in this form (p. 2357):

"It was argued that invention and labor are the means of acquiring property; and that literary compositions are the objects of the authors' sole pains and labor; therefore, they have the sole right in them."

From the most casual reading the bill demonstrates that this fundamental element is lacking in this case, because in no particular are these quotations the result of mental effort on the part of the board of trade. They are not produced by it. Most favorably considered, each is the labor of two brokers, not working for the board of trade, but merely availing themselves of the privileges and conveniences which the board of trade affords them. It is therefore owned, if at all, by one or both of those brokers and not by the appellee.

We, of course, can anticipate the answer to this assertion, that these quotations are in their essence private and not public, because they originate upon the floors of the board

of trade, access to which for trading purposes is denied to any but members of that board; but this, we contend, is no answer and is sticking in the bark of the proposition. The members, so far as their trading is concerned, act individually and independently. The only office of the board of trade is to furnish them a place and facility for such independent and individual action. It is not the board of trade that is dealing. It is not the board of trade that is creating these quotations, but the brokers engaged in business with the public and inviting business from the public. The brokers as individuals do business upon their own account with the public. If the board of trade had anything whatever to do with the fixing of these market prices, there might be something in this connection, but because the board of trade provides a four-square, within which this dealing may be done, it does not thereby acquire a right or interest in the subject of the transactions. It does not create these quotations. The first connection of the board with this "property" is after it has been created.

Moreover, each one of these quotations, as we have pointed out, must in and of itself possess all of the constituent elements of property. Therefore, the knowledge of these quotations, considered in gross, must be the object of ownership by many separate and distinct people, owning separate and distinct items, with no community of ownership whatsoever. More than this, in many instances, if indeed not all, these brokers are acting as agents for principals not members of the board. If this information can be referred to ownership, it must beto these principals, so that we further find a large element of ownership of this property resting with the public at large, and not even with any members of the board. The board could not assert a right of ownership against those principals whose transactions created it and who of all men can be said to own it, if capable of ownership at all.

Counsel for appellee has wholly failed to make this discrimination. The bill extends the claim of property to the

knowledge of these quotations as though the board of trade had produced them. The brief from which we have already quoted further shows this misapprehension of the origin of title (p. 23):

"While a lecture or a play differs from the quotations in that the former results from the exercise of mental power of a high order and has a permanent utility and value, and these quotations are but the result of a species of news-gathering, and possess only an ephemeral utility and value; still, they are alike in that both result from individual effort; they both meet the requirement that 'the origin of property is in production;' they are, when produced (gathered) within the exclusive dominion and control of the producer, who may give them to or withhold them from others, as he pleases, and they can be made a source of profit or income to the producer. The quotations cost money to collect, and persons will pay money for them. A play or lecture costs effort to produce, and persons will pay to hear it. Each has this same practical test of property."

It is apparent from what has been said that there is no similarity whatever between the case put in the brief by way of illustration and the case at bar. The matter of cost referred to in the extract from the brief is wholly apart from the question at issue here. The cost which the board claims to have expended is in gathering the quotations on the floor of the exchange, after they have been created. This "property" (if property at all) was in existence before the cost of compilation was incurred. The board is claiming an original title to these quotations as they arise from the transactions of members in the pits. It is obvious that this contention is unwarranted. The quotations do not represent any mental or other effort upon the part of the board or any outlay of money, and the analogy between its claim and that of the dramatic or literary author is wholly unwarranted in sound argument.

Nothing can be the object of property which has not a corporeal substance.

The statement of this proposition is its argument. The right to literary property is a right to the manuscript, an arrangement of words and ideas, and to that alone. The segregated and separate ideas and words making up such literary production are not and cannot be the subject of property. So, therefore, the literary property is corporeal to the extent that at common law, at least, it is limited to the manuscript, and the author of such manuscript is protected to the extent that it may not be stolen from him and set at large. It may be confidentially communicated to one who cannot, without authority, publish it. In brief, the author may retain and hold the usufruct of it for himself until he shall either voluntarily publish it or dispose of it to another to publish; but once published all element of property at once vanishes. That property must reside in a corporeal substance is convincingly and conclusively argued and stated by Mr. Justice Yates in *Millar v. Taylor, ubi supra*, whose views in that respect, and in all others, were early considered by the Supreme Court of the United States in the case of *Wheaton v. Peters*, above cited, and necessarily adopted and affirmed. We quote from Mr. Justice Yates' opinion (p. 2361):

"And it is a well-known and established maxim (which I apprehend holds as true now as it did 2,000 years ago) 'that nothing can be an object of property which has not a corporeal substance.'

"There may be many different rights, and particular distinct interests in the same subject; and the several persons entitled to these rights may be said to have an interest in them; but the objects of them all, the principal subject to which they relate, or in which they enjoy, must be corporeal. And this, I apprehend, is no arbitrary, ill-founded position; but a position which arises from the necessary nature of all property. For property has some certain, distinct and separate possession; the object of it, therefore, must be some-

thing visible. I am speaking now of the object to which all rights are confined. There must be something visible which has bounds to define it, and some marks to distinguish it. And that is the reason why these great marks are laid down by all writers. It must be something that is visibly and distinctly enjoyed; that which is capable of all the rights and accidents and qualities incident to property; and this requires a substance to sustain them.

"But the property here claimed is all ideal; a set of ideas which have no bounds or marks whatever, nothing that is capable of a visible possession, nothing that can sustain any one of the qualities or incidents of property. Their whole existence is in the mind alone; incapable of any other modes of acquisition or enjoyment, than by mental possession or apprehension; safe and invulnerable from their own immateriality; no trespass can reach them, no tort affect them, no fraud or violence diminish or damage them. Yet these are the phantoms which the author would grasp and confine to himself; and these are what the defendant is charged with having robbed the plaintiff of.

"In answer to these objections, it was alleged for the plaintiff 'that there are many other instances of incorporeal rights; such as all the various kinds of prescriptive rights and partial claims.'

"But the fallacy lies in the equivocal use of the word 'property;' which sometimes denotes the right of the person, as when we say 'such a one has this estate, or that piece of goods,' sometimes the object itself.

"Here the question is upon the object itself, not the person. I readily admit that the rights of persons may be incorporeal.

"But the question is now, 'whether anything can be the object of proprietary right, which is not the object of corporeal substance.' And for my own part, I know not of any one instance of any one right which has not respect to corporeal substance. Every prescriptive inheritance, every title whatever, has respect to the lands in which they are exercised. No right can exist without a substance to retain it, and to which it is confined; it would, otherwise, be a right without any existence."

And so in *Keene v. Wheatley*, Fed. Case 7644, page 194:

"Inventions, literary compositions, and other primary results of mental development are incapable of any profitable use, independent of actual or potential communication of the knowledge of the results. Actual communications of the knowledge are irrevocable. The original possessor of the knowledge cannot afterwards, by any physical or other process of resumption, deprive others of it, or by any physical means prevent its ulterior communication, or suppress any such diffusion of its fruits as can be directly or secondarily effected through any means which he has once placed at the command of another person. * * * An oral discourse, though studiously prepared and committed to memory, depends for its retention of communication upon a fugitive or evanescent mental impression. Such a result of mental development may be the subject of conventional engagements, express or implied, or of confidential relations, imposing duties cognizable in a court of equity. But it cannot be the subject of proprietary right (3 Law J., ch. 209, imperfectly reported on this point in 1 Hall & T., 28, 33, 35, 38, 39)."

Nothing can be the object of property which is not capable of sole and exclusive enjoyment.

The very word property, drawn from a word which means to seize and to possess, would seem to demonstrate that the idea for which it stands carries with it the principle of exclusiveness, of separate and personal dominion. From the beginning all the writers, both of the common and of the civil law, have derived the primary notion of property from its capability of being appropriated and separated from the mass and held in the enjoyment and dominion of one alone. Unless the object is capable of being exclusively possessed and enjoyed, it cannot be said to be property. To call that thing property over which an original and exclusive and continuous dominion may not be exercised is a contradiction in terms.

Says Mr. Justice Yates in the case of *Millar v. Taylor, ubi supra* (p. 2362):

"Here the maxim occurs which I mentioned before, that nothing can be an object of property, which is not capable of a sole and exclusive enjoyment. For, property, as Pufendorf observes, implies a right of excluding others from it. For, without that power, the right will be insignificant; it will be in vain to contend that 'that is your own,' which you cannot prevent others from sharing in."

"With regard to books," says Mr. Justice Yates (p. 2365), "the very matter and contents of the books are, by the author's publication of them, irrevocably given to the public; they become common; all the sentiments contained therein rendered universally common; and when the sentiments are made common by the author's own act, every use of those sentiments must be equally common.

"To talk of restraining this gift, by any mental reservation of the author, or any bargain he may make with his bookseller, seems to me quite chimerical.

"It is by legal action that other men must judge and direct their conduct; and if such actions plainly import the work being made common, much more if it be a necessary consequence of the act, 'that the work is actually thrown open by it,' no private transaction or secretly reserved claim of the author can ever control that necessary consequence. Individuals have no power (whatever they may wish or intend) to alter the fixed constitution of things; a man can't retain what he parts with. If the author will voluntarily let the bird fly, his property is gone; and it will be in vain for him to say 'he meant to retain' what is absolutely flown and gone."

Applying these general suggestions to the case in hand: First, as these quotations are made, they are necessarily public. They are published first to the brokers engaging in the transactions upon the board, and, second, to their principals for whom they are dealing; and the information thus given by these agencies may freely be transmitted in turn *ad infinitum*. So publicity of these quotations is inseparable from their creation.

In *Keene v. Wheatley*, Fed. Cas. 7644, property is defined as follows (p. 191):

"Proprietorship is a certain or contingent exclusive right of unlimited or limited profitable use of an ascertainable subject."

Chancellor Kent says (2d Com., 320):

"The exclusive right of using and transferring property follows as a natural consequence from the perception and admission of the right itself."

In Bouvier's Law Dictionary property is defined as follows:

"An *exclusive* right to things, containing not only a right to use those things, but a right to dispose of them, either by exchanging them for other things, or by giving them away to any other person without consideration, or even throwing them away."

"One of the valuable incidents of the ownership of land is the right and power of *exclusion*."

Walker v. Old Colony R. R. Co., 103 Mass., 14.

"The term 'personal property,' using the word 'property' with reference to the thing owned and not the right of ownership, embraces at the common law all those things in which one may have a right and interest to the *exclusion* of others."

Shouler's Personal Property, sec. 2.

"Property is the *exclusive* right of possession, enjoyment, and disposal of a thing which is in itself valuable. It is ownership."

Jones v. Van Zandts, Admr., 4 McLean, 603.

Blackstone says (1 Com., 138):

"The third absolute right of every Englishman is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land."

Webster's definition, undoubtedly drawn from the universal acceptance of the term, is:

"The *exclusive* right of possessing, enjoying and disposing of a thing; ownership."

All of these definitions of property convey the idea of exclusive dominion. Moreover, the universal significance of the word, apart from any technical legal consideration, carries with it this paramount idea of dominion. It is in accordance with the universal notion of mankind and it would be impossible to define property eliminated of this attribute. Incapable of sale; placed without the protection of the law, and held in common with the world at large, it cannot be subject to private ownership.

Nothing can be the object of property that is not capable of distinguishable, proprietary marks.

These quotations are mere figures and words, infinitely repeated. That which persuaded the courts to accord the element of property to literary production was that, although the ideas were common and the words which expressed those ideas were in universal use, nevertheless the arrangement of words and ideas into a particular literary form was such that they might be earmarked and identified. This appears in the opinion of Mr. Justice Erle in the case of *Jefferys v. Boosey, ubi supra,* he, however, arguing with the minority in favor of the view that literary property existed at common law after publication. We cannot better inform the court of the difference between that which is sought to be claimed as property here and literary property than by quoting Mr. Justice Erle's opinion (p. 869):

"With respect to the first of these grounds, that copyright cannot be the subject of property, inasmuch as it is a mental abstraction too evanescent and fleeting to be property, and as it is a claim to ideas which cannot be identified, nor be

sued for in trover or trespass, the answer is, that the claim is not to ideas, but to the order of words, and that this order has a *marked identity and a permanent endurance.* Not only are the words chosen by a superior mind peculiar to itself, but in ordinary life no two descriptions of the same fact will be in the same words, and no two answers to your lordships' questions will be the same. The order of each man's words is as singular as his countenance, and although if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenances that could not be discriminated. The permanent endurance of words is obvious, by comparing the words of ancient authors with other works of their day: the vigor of the words is unabated; the other works have mostly perished."

This identification of which Mr. Justice Erle speaks is such as resides in the work itself and needs no extraneous evidence. He urged that it was property, because it was capable of identification and that it was property because it was an arrangement of words that was unique, peculiar, and might be readily recognized and appropriated by its author.

This cogent argument of Mr. Justice Erle was to establish the proposition that because a literary work could be earmarked and identified, therefore it could not be lost by publication, but might be readily reclaimed by its author. In this contention he failed, but if his ingenious and forceful argument was unavailing in the matter of a literary composition, how far must any argument fall short in demonstrating the existence of this element of property in these quotations as they flow from the lips of the traders upon the pit? Bearing in mind that if there be property at all in these quotations, as the counsel for appellee insists, in the mere knowledge of them, that property has its inception at the instant of their announcement, how can such knowledge be identified, earmarked, in the purlieus of the board of trade, inasmuch as it has been created by the united voices of any possible two of the two thousand members or thereabouts

composing the board of trade? It lacks any internal evidence of identification nor can it be identified extraneously.

We therefore conclude this branch of the argument with the assertion that no right of property can be asserted to the knowledge of these quotations as they arise from transactions of members in buying and selling the commodities for the public for whom they are acting. This information is as free as the air or the sunlight, and no more susceptible to private property dominion than those elements.

The board of trade cannot alter the essential nature of these quotations by making record of them in its office. Its sole right of property is necessarily confined to the records themselves.

Having now considered the origin of these quotations and tested them by the elementary principles of property, we can now discuss the nature of any claim of property which might be asserted by the board of trade. The facts are simple. As these quotations arise from dealings of members in the pits memoranda are taken and delivered to various telegraph offices stationed in the hall. The work of gathering these quotations and delivering them to the telegraph companies is that performed by the board of trade pursuant to its contracts with the telegraph companies. Here occurs the first connection of the board of trade with this "knowledge." It is after the transaction is closed, the bid made and accepted, the "quotation" produced and published in the manner we have heretofore pointed out. Indeed, more accurately speaking, it is not the board of trade which gathers these quotations, but it is done by an independent corporation, namely, the Cleveland Telegraph Company, which is engaged in that work under a license from the board of trade to go upon its floors. So far from costing the board of trade any money or labor to perform its contract with the telegraph companies, it appears from the rec-

ord in this case that the work is performed by an independent corporation, and that the board makes a large actual profit from the arrangement with this subsidiary corporation.

In considering the claim of the board of trade one is forcibly reminded of the driftwood story: The story goes that a man, walking along the levee of the Missouri river during the June rise in a western town, when the stream was full of floating logs and timber brought down from the northern forest regions, aroused a lot of sleeping loafers sitting or lying upon the bank, and asked them if they wanted employment, and when they responded in the affirmative, suggested to them that they might take a boat and go out and catch driftwood. To an inquiry as to what they were to get for such work, they received the response that they would be given half they caught.

Bearing in mind that these quotations as they originate have no element of property whatsoever, the application of this little parable is quite apparent.

But granting, as we do, that the work of gathering these quotations is that of the board of trade and one which it may very properly undertake, the question yet remains whether there is here involved a species of alchemy which transmutes that which was before public and free as the air into something which partakes of all the attributes of property, which may be and necessarily is confined and restricted to the dominion and exclusive use of the board of trade. The function of the board of trade is purely that of an historian of public events. In other words, and the distinction cannot be too clearly drawn and impressed, the *object* of property here is not the quotations themselves, not the knowledge of the fluctuating prices of the cereals and provisions sold in the pit, but is in the *record* of them prepared under the direction of the appellee. To this result must all analysis, all application of the cardinal principles of property, lead. These records, and these alone, are corporeal, are visible, are

capable of being distinguished, and are susceptible of sole and exclusive dominion.

Having now cleared the question of the confusion arising from the doubtful and uncertain reference of the appellee in its bill as to the nature and extent of its property right, we may now proceed to more clearly and intelligently understand the issue and the only issue which is presented for the consideration of this court under this head, namely, that the appellants have appropriated appellee's property to their use against the will of the appellee. We may lay aside for the present all questions of public policy; of whether there is property here impressed with a public trust or not. We are now regarding this proposition from the purely private standpoint of the individual whose dominion over his property may be conceded to be absolute and exclusive.

It is not to be overlooked that these reports or memoranda delivered to the telegraph companies are confined to the bald and naked representation in figures of the selling prices. In other words, that which is presented to the telegraph companies is exactly that which is existent in the public mind; nothing more, nothing less. Obviously, the dominion and control of the board of trade over its records, over the only thing which it has created, is in no manner interfered with by the appellants in this case. That which the appellants concede to have obtained and to have availed themselves of is this knowledge, this information, created and public before the board of trade acted upon it at all. To be sure, the appellants may be said to have derived this information through this channel. That we will discuss later. The point which we now wish to impress is that the sole thing which the appellants are charged with using is information which is clearly public. The channel through which they may have acquired it is a totally different matter. It therefore seems to us that at the outset the appellee is met with a fatal objection to its claim of property in these quotations upon the principle that that which has become public and

common cannot thereafter be subject to exclusive, independent, proprietary dominion and control.

The analogy of the copyright law, which, as we have seen, is the most favorable of all analogies to the appellee, refutes this claim of the appellee. The theory is that the author who has created a literary property is vested for a definite period of time with an absolute control over the publication of his work. It is for him to determine when and under what circumstances it shall become public, it shall become common. If he once has exercised this right and permitted it to become public, he cannot thereafter repent his election or revoke his dedication. The same is true of an easement over lands. Granted that the easement once exists, it is beyond the power of the owner of the fee to regain control. Or if the easement was originally restricted and by acquiescence of the one upon whose property this subservience exists the public use has become enlarged, it cannot be recalled.

We have said that each one of these quotations must in and of itself partake of all the elements of property, the truth of which is obvious. Manifestly, each one of these quotations has not only become public within the halls of the board of trade, but has gone beyond the walls of that exchange; has been communicated to the principals for whom the brokers were dealing in the pits, and necessarily has been again communicated to still other individuals, both those who are members of the exchange and those who are not; and this without restriction as to the purpose of such communication. Under what reasonable theory, then, can the recording of these quotations upon the bits of paper reduce such knowledge to the rules of private ownership? Can such act upon the part of the board of trade revoke the previous general publicity already given to this information? Can it put thereby a curb upon the tongue of the broker or of the public at large who have become possessed of it? Can that which is boundless be constrained and put in bounds? Can that

which has become infinite be made finite? As well might one claim a right of property in the air of a room by drawing a portion of it into a bottle and sealing the bottle. The symbolic and tangible representation of the knowledge upon the records of the board of trade must not be confounded with the knowledge itself. It is none the less available to others who may pursue it. The communication of a thought by no means gives to the recipient a monopoly of that thought.

The action of the board of trade in reducing these quotations to writing and then delivering them to the Western Union Telegraph Company unchanged from their original nature and characteristic may be illustrated in the case of a turbine wheel over which water from a public stream is allowed to run. The water from above passes over the wheel to the stream below. It is none the less public below because it has passed through the wheel. It is this essential failure of the creative faculty which differentiates this case from all other claims of literary proprietorship. Take, for example, the case of the Associated Press. There an event public in its nature transpires. The Associated Press does not confine itself to a bald and naked recital of the fact, but brings into play a creative faculty. It is something original; something which did not exist before; a new product which is sent over the wires by the associate editor. There are the ear-marks of private ownership, and the story as told by the Associated Press is as capable of identification as any other literary performance. The celebrated editor Charles A. Dana, whose motto was "Print the news and all the news," held that the influence exerted by a newspaper upon public opinion consisted more in the manner of collating and printing the news than by its editorial utterances.

Suppose that instead of transmitting this information over the lines of a telegraph company the board of trade should verbally inform A that May wheat sold on the board of trade for eighty cents, could it be contended for a moment hat the recipi ent of that information could not give the

widest publicity to it? The circumstance that instead of this being a verbal communication it is in writing to the telegraph company cannot alter the case. These homely illustrations only serve to bring this case and the extent and nature of appellee's claim more forcibly to the attention of this court. It cannot be lost sight of that appellee's claim must of necessity rest on something more solid for its foundation than the mere collection of these quotations upon bits of paper after they have transpired. It must go beyond that and must show a property right attaching at the very inception of the quotations, at the very instant of their creation. This is demonstrated by the claim of damage which is asserted in the bill (p. 6), which we have already quoted, but which we quote in part again:

"For if any telegraph company, or other person, is permitted to promptly acquire said quotations surreptitiously or by theft, and without paying your orator therefor, the telegraph companies contracting with your orator for said quotations and agreeing to pay your orator therefor, will be put to such a disadvantage in competition with such telegraph companies or persons acquiring the same surreptitiously and without paying your orator therefor, as to prevent said contracting telegraph companies from long continuing to purchase said quotations from your orator."

In other words, the board of trade claims a monopoly of the knowledge and information itself. Unless it can support this claim of monopoly its whole case must fall. It can certainly acquire no monopoly in the right to communicate that which is already public property. If it could, then the Associated Press could successfully enjoin any competitor from embarking in a similar business and selling news of current events as they might transpire.

Another principle closely related to the one just discussed and which equally forbids the claim of property asserted by the appellee here is that the copyright is confined to the manuscript or work in the form produced by the owner, and

does not include knowledge, ideas, or suggestions which may be communicated thereby. As Mr. Justice Willes said (p. 2331):

"But the defendant's counsel insist that by the author's sale of printed books the copy necessarily becomes open. In like manner, as by the inventor's communicating a trade, manufacture, or mechanical instrument, the art becomes free to all who have learnt from such communication to exercise it.

"The resemblance holds only in this, as by the communication of invention in trade, manufacture, or machines, men are taught the art or science, they have a right to use it; so all the knowledge which can be acquired from the contents of a book is free for every man's use. If it teaches mathematics, physic, husbandry; if it teaches to write in verse or prose; if, by reading an epic poem a man learns to make an epic poem of his own, he is at liberty.

"But printing is a trade or manufacture. The types and press are the mechanical instruments; the literary composition is as the material, which is always property. The book conveys knowledge, instruction or entertainment, but multiplying copies in print is quite a distinct thing from all the book communicates. And there is no incongruity to reserve that right, and yet convey the free use of all the book teaches."

This is the most favorable statement of the case for the appellee which can be found anywhere. It is shown by the decision of the Supreme Court of the United States in *Wheaton v. Peters* that the argument is fallacious even as applied to works admittedly involving a creative faculty. As said by the court in the case last cited (p. 657):

"The argument that a literary man is as much entitled to the product of his labor as any other member of society cannot be controverted, and the answer is that he realizes this product by the transfer of his manuscript or in the sale of his works *when first published.*"

Here, without the slightest creative faculty, without exercising any mental effort, the board of trade brings to the

telegraph company a report, showing the prices at which these cereals are selling in the pits. Two things are there presented: First, the physical, corporeal, visible manuscript, upon which this record is written, and second, the knowledge which it contains. Under the most extreme view, the property right is confined to the former. It remains for this case to assert a claim in the latter.

It is a contradiction in terms to insist upon a restricted communication of ideas or knowledge. In the very nature of things it cannot exist. A literary proprietor may very properly restrain the use of his manuscript which he may have loaned a friend or given to another to read. But his right of restriction is confined to the reproduction of the thing itself, not to any knowledge or information that it may contain, which may be freely given the widest publicity. In this case the board of trade has brought that which is a matter of common knowledge to the telegraph companies. It has brought it in the bald and naked form in which it existed before. It at most consists in a simple communication of an already existing public fact, and the contention of the appellants is that under no circumstances, by no contract, by no casuistic reasoning can the appellee rightfully assert a private ownership in that knowledge thus acquired.

Appellee is without power to claim a right of restricted publication. If it publishes it at all, it must be unconditional.

Another objection to the claim of appellee here is that even if this be conceded to be private property, not only as regards the manuscript upon which it may appear, but as regards the information and knowledge itself, nevertheless, is not within the protection asserted by the appellee, for two reasons: First, because under the charter of the board, as construed by the supreme court of Illinois, it may not retain

it to the exclusion of the public, and, second, because under its contract with the telegraph company it is a public dedication, and not a restricted publication.

Upon the first point we have seen that in all of the cases upholding the right of publication they involve an element of election by the owner. The owner may privately publish and distribute to a limited number of friends, or he may refuse to publish altogether or he may publish without restriction. We are here, as we have said, confronted with a case, however, where under the charter of the company it is granted a power to publish and disseminate this knowledge, and it needs no argument to say that the power thus granted in the charter carries with it a duty to duly and publicly exercise it. The language of the grant is as follows:

"To acquire and to disseminate valuable commercial and economic information."

This charter has been construed by the highest court of the State of Illinois in the case of *New York & C. Grain & Stock Exchange v. The Board of Trade of the City of Chicago et al.*, 127 Ill., 153; 19 N. E., 855. That was a suit brought by the New York and Chicago Grain and Stock Exchange, a trading corporation, against the Board of Trade of the City of Chicago and certain telegraph companies, to enjoin the board of trade from refusing to deliver reports of quotations through the telegraph companies to the complainant. Upon final hearing the bill was dismissed, but upon appeal to the upreme court of Illinois it was held as follows. (We quote from the syllabus):

"Though the Chicago Board of Trade is a private corporation, and the business transacted by it daily is of a private nature, yet the board having for many years permitted and invited a telegraph company to transmit during the sessions of the board, to all persons who chose to pay for the information, reports of the dealings of the board, fluctuations in prices, etc., and the information so obtained having in consequence become of essential importance to the

commercial world, such information has become impressed with a public trust, and the board cannot now treat it as purely private, and withhold it from all but a favored few."

Our present argument, however, is apart from the question of these quotations being impressed with a public trust, which we shall argue later; but certainly this clearly decides that if the board of trade undertakes to publish at all, it shall publish unrestrictedly.

Under all of the principles which govern publications of literary property, it seems clear that the effect of the contract between the board of trade and the telegraph company is a public dedication beyond recall of this information. The idea of a private or restricted publication necessarily implies a right of revocation. This holds true as to all manner of limited dedication to the public, either of literary ownership, or of easements of lands, or anything else of a kindred nature. The author who loans his manuscript, or the playwright who invites a definite portion of the public to a private recital, still retains the fullest measure of physical control over his manuscript and over the right to prevent reduplications of the same. Here the claim of appellee extends not only to its manuscript, but to the ideas or knowledge as well. If we grant, for the purpose of the argument, that the claim is tenable, nevertheless, the effect of its contract with the telegraph companies is to put this knowledge beyond its recall. It has voluntarily placed it within the channels of commerce. It cannot revoke it. If it is communicated once, it necessarily must be communicated for all time to come.

The appellee recognizes this inevitable result, but shrewdly seeks to fix the period when it shall be deemed to have lost its control, not by virtue of any subsequent act of relinquishment upon its part, but by mere passage of time. It concedes that it has loosed its hold forever upon this knowledge; has sent it forth into the world. It undertakes to

say, however, that after the lapse of ten minutes, and not before, this information shall become public. In other words, that the essential ingredient of the transmutation from private to public ownership shall be the mere passage of time. By the same token it could prolong its ownership if it so desired, and declare that it should not pass the bounds of control for one hour, because nothing will have occurred within the ten minutes that would not be equally applicable in the argument of a right of ownership for the longer period. This is certainly not what is meant by restricted publication, and the fact that the counsel resorts to the argument simply illustrates the length to which he is driven in supporting this extraordinary demand.

The case is very similar in principle to that of *Ladd v. Oxnard*, 75 Fed., 703. There the plaintiff was claiming a copyright, and it was necessary to establish a general publication. The syllabus sufficiently describes the case:

"The issuance to subscribers, without count as to number, of a book of credit ratings and the financial standing of persons and firms engaged in a particular line of business, upon a stipulation that the same is merely loaned to the subscriber, and not sold, and that, if found in any other hands those entitled to use it by permission of the publishers, the latter may take possession of it, and annul all rights of the subscriber, is a publication, sufficient to give the compilers a right to the protection of the copyright statutes, where they have taken the necessary steps to secure a copyright."

"Evidence showing that plaintiff had sent a number of copies of a work to booksellers and private individuals, for examination, before acquiring a copyright, and had in one instance accepted the purchase money, constitutes a publication within Rev. St. U. S., sec. 4956, which provides that no person shall be entitled to a copyright unless he shall, within ten days from the publication thereof, deliver two printed copies of the book to the Librarian of Congress."

Gottsberger v. Aldine Book Pub. Co., 33 Fed., 381.

In the case of *Keene v. Wheatley*, Fed. Cas. No. 7644, which is probably the most instructive case in the American reports

upon the principles affecting this class of property, a publication is thus defined (p. 198):

"A publication of such a composition is an act which renders its contents, in any mode or degree, an addition to the store of human knowledge. Every communication of a knowledge of such contents, or of any other primary result of mental development, unless confidential, is, more or less, a publication. * * * A land-owner's express or implied concessions, through which an easement is acquired by the public, are, also, a dedication to the public. But, from the differences in the natures of the respective subjects, the two dedications differ in such of their legal effects as depend upon the dedicating proprietor's own definition of his intended purpose. In the case of an easement, his intention, so far as definable from his acts and omissions, always determines the existence of the rights of the public, and ascertains their extent. *City of Boston v. Le Craw*, 17 How., 426; 5 Watts & S., 141–143; Adol. & E., 99; 5 Taunt., 127. Whereever this intention is incapable of taking effect, his dedication is ineffectual, except as a mere license, revocable at his pleasure. 11 Mees. & W., 830; 13 Mees. & W., 838. The existence of the public easement in such a case is thus not less dependent than that of a private easement in all cases, upon the intention of the proprietor of the land in which it is exercisable. But, when a literary proprietor does an act which has the effect of such a dedication, the public may acquire from it rights independent of any optional definition by himself of his intention. The cases in which this may occur are of two classes. Cases of one class are those of 'dedication to a limited part of the public.' Except in the single case of a charitable disposition, unincorporated persons not individually ascertained are legally incapable of acquiring property. That which would otherwise be a dedication to the use of a limited number of unascertained persons must, therefore, either enure to the benefit of the whole public, or take effect as a mere license. The latter is the effect when the existence of an easement is in question. 11 Mees. & W., 830. So, in the case of a charitable disposition incapable of taking effect the former proprietorship continues. But, in the case of literary composition the rule is the reverse. Thus, although the number of a theatrical audience were strictly limited, however small it might be, and however

high the price of admission, yet, if no discrimination were exercised as to the persons admitted, the representation before such an audience would enure to the benefit of the whole public. See 12 Adol. & E. (N. S.), 237. Cases of the other class are those of dedication to the whole public for a limited purpose. The purpose of the dedication of an easement for public use may be limited. 2 Camp. 264, note; 11 Mees. & W., 830. See 5 Taunt., 127. But, here again, the rule as to literary composition is different. When the composition is published without any discrimination as to persons, a restriction of the purpose, or of the extent, of the publication would be futile. Such a restriction cannot prevent ulterior diffusion of the knowledge of the contents by unknown persons. After such diffusion, the publication could not be suppressed without injustice to other persons to whom the knowledge might have been communicated. The restriction being thus, as to the public, a nullity, the effect of the publication is irrevocable and unlimited."

So in the case at bar, this information, according to appellee's averments in its bill, and its contract, is immediately disseminated through tapes or tickers and over the telegraph wires to a large and unascertainable number of the public; it is immediately exposed on the tapes to the view of whomsoever will. The attempted restriction is utterly futile, because, by its own act it has sown this information broadcast.

The appellee has realized the full avails of its property according to its nature when it has sold and delivered the quotations to the telegraph companies.

It is to be presumed, of course, that the telegraph companies will continue to disseminate these quotations. Assuming a tangible right of property in the record of these transactions which embraces the knowledge as well, nevertheless the board can only enjoy its right of property according to its nature and the fixed condition of things. As said by Mr. Justice Yates in *Millar v. Taylor, supra*, p. 2357:

"All property has its proper limit, extent and bounds. Invention or labor, (be they ever so great,) cannot change the nature of things, or establish a right where no private right can possibly exist."

* * * * * * *

(P. 2359:)

"That every man is entitled to the fruits of his own labor, I readily admit, but he can only be entitled to this according to the fixed constitution of things; and subject to the general rights of mankind and the general rules of property. He must not expect that these fruits shall be eternal; that he is to monopolize them to infinity; that every vegetation and increase shall be confined to himself alone, and never revert to the common mass. In that case the injustice would lie on the side of the monopolist who would thus exclude all the rest of mankind from enjoying their natural and social rights."

On page 2360, after discussing the right of the author to dispose of his manuscript, either under the common law or the copyright statute, Mr. Justice Yates further said:

"If an author is permitted to enjoy his property according to the nature of it, he can have no injustice done him; and if his situation is such that he can only dispose of it as other people can of their goods; or if he can only dispose of it for the first publication, can the author murmur because he can dispose of it only as other people can their property? Shall an author's claim continue without bounds of limitation, and forever restrain all the rest of mankind from their natural rights by an endless monopoly?"

Yet, such is the claim that is now being made. The Supreme Court of the United States, in *Wheaton v. Peters*, recognized and answered the claim in substantially the same words which we have already quoted (8 Pet., 657):

"The answer is that he realizes this product by the transfer of his manuscripts or in the sale of his works when first published."

The board of trade, to use a homely phrase, "cannot eat its cake and have it." It cannot sell these quotations for the express purpose of resale and yet claim a restricted publication of them. It is a contradiction in terms to insist that that which it has done in virtue of these contracts can be said to be a restricted publication.

The delivery of these quotations to public agents like the telegraph companies is necessarily a publication to the world.

It is observed that the contract of the board of trade is with public agents which are, in addition, instruments of interstate commerce. Is it not absurd to say that the board of trade may accomplish a restricted publication of this knowledge by employing for the purpose a public agency like the telegraph companies. No matter what conditions it may seek to impose upon these public agencies, no matter how carefully it may classify those who shall receive the information, if it give these quotations to the Western Union Telegraph Company to be transmitted to any number of persons, with the first click of the telegraph instrument they are public; they are gone and can never be recalled. They belong to the sum of human knowledge and may be acquired in any way or from any person by any device and used for any purpose so far as the board of trade is concerned.

The case of *Bryant v. Western Union Telegraph Company*, 17 Fed., 825, has been and doubtless will be again cited by the counsel for appellee in support of the contention that the board has a complete control over the dissemination of these quotations. The principle which was before the court and was decided is obviously correct; namely, that one engaged in bucket-shopping or an illegal business is in no position to invoke a court of equity to compel the furnishing of quotations to him. That was all there was in the case, and anything beyond that is bald dictum of a character which we

submit is not even persuasive argument. Its application to this case is not apparent, because it is the admitted purpose and desire of the board to sell and publish these quotations. The only question is whether, having undertaken to publish this knowledge, it can restrict the publication to the exclusion of legitimate dealers; and, furthermore, whether, even granted its right to restrict the publication, it can accomplish that purpose through a public agency like the telegraph company.

To the case of *Bryant v. Telegraph Company* is appended a very carefully written note by Mr. Adelbert Hamilton, an eminent lawyer of Chicago. We quote from the language of Mr. Hamilton, with the cordial approval which its sound sense plainly deserves:

"Another point may be suggested. A telegraph company is a public corporation, exercising public franchises—*e. g.*, eminent domain—and serving the public in all ways for which it is competent. It is an agent of the public. As a part of its business it collects, in the various cities and places to which its lines run, information of ruling market prices. This information it transmits over its lines, and sells it to such of the public as desire to buy it. Now, when the board of trade admits the reporters and operators of a public agent to its rooms, and allows them to take and transmit quotations of prices, does not the board make a publication of its prices to the public, which entitles the public to use them without restriction? Is not the giving of such prices to an agent of the public a publication of them for the benefit of the public? If it publishes its prices to the world, can it say that certain persons shall not avail themselves of them? The publication is not copyrighted. Can the board restrict the use of published quotations by the public any more than an author who has no copyright can, after publication, restrain the subsequent publication of his work by all who choose to print it?"

It seems clear, then, that even assuming for the purpose of this argument that the board of trade has a complete right of property, both to the original knowledge contained

in the record of these quotations and the records themselves. It is a thing which is essentially incapable of restricted publication through the channel and instrumentality of a public agency like a telegraph company. It is dealing with an acknowledged principal, to wit, the public through an agent of the public. Does not the ordinary rule obtain which imputes to the principal knowledge possessed by the agent? It seems to us that it is utterly irrational to contend that under the circumstances of this case the control and dominion of the board of trade of every kind and character over these quotations has not ceased the instant the quotations are placed in the hands of the telegraph companies.

The distinction between restricted and general publication does not extend to matter of this kind.

We also undertake to say that the rule of restricted as distinguished from a general publication only applies to that character of literary production which comes within the terms of the copyright law. This does not conflict with the rule relating to trade secrets and the like, which obviously has no application to the case at bar. If there is a right of restricted publication here, it must be analogous to that possessed by the author or dramatist or other literary producer and owner.

The Supreme Court of the United States, as we have seen, has held that the copyright act is not the recognition of a property interest already in existence, but is the creation of new rights. Such property right is purely the creature of the statute. Now, if this information which the appellee has gathered is not within the copyright law, we are confronted with this anomalous condition: that these quotations, the product of no invention or peculiar or special labor upon the part of the board of trade, incapable of being earmarked or distinguished, lose none of their character as property by publication, but may be followed and the use restricted into

the hands of whomsoever the information contained therein may come. This results in giving to these quotations a quality of property, a higher protection, a greater sanctity than is permitted to any intellectual or literary production.

It follows, then, that these facts and figures collated upon the board of trade not being copyrightable, all of the analogies to be drawn from the law relating to literary property are inapplicable to the case in hand, so far as the question of publication is concerned. Therefore the dilemma occurs that either they lack all of the elements of property, whether in the air or after they have been recorded and collated by the instrumentalities of the board of trade, or the property right that inheres in them is in nowise lost by publication and they may be forever subject to reclamation and control, which reduces, we insist, the argument and contention of the appellee to an absurdity. In fine, we contend that with respect to every sort of knowledge or information not a trade secret and not subject to be copyrighted there is and can be no element of property whatsoever involving a right of control of publication or reclamation. The first breath of air which gives it to any one gives it to all. This disposes of the claim of a right to prevent us, as it has been expressed in the bill, "surreptitiously" or against the will of the board of trade acquiring this knowledge in any way that we may see fit. Appellants have agreed by stipulation that they are using this knowledge and information, and are acquiring it as rapidly as it may be obtained after it is bruited about on the floor of the board of trade.

The telegraph companies are made nominal parties to this suit. They stand mute. They are not complaining of appellant, nor are they assisting the board of trade in the prosecution of this suit.

Therein this case differs *toto cealo* from the cases which we shall presently consider, cited by appellee's counsel.

Cases and Points of Appellee on the Question of Property Right.

The cases that counsel for appellee cited as analogous in support of the right of property in the court below are of three classes: The one to the effect that the production at a theater of an uncopyrighted and unprotected play is not a publication. *Thompson v. Halleck*, 133 Mass., 32; *Palmer v. De Witt*, 47 N. Y., 532; *Crowe v. Aiken*, 2 Biss., 208, Fed. Cas. No. 3441, are cited under this head. Second, those relating to lectures pronounced from a platform in a public hall, in support of which *Abernathy v. Hutchinson*, 1 Hall. & Tw., 28; *Caird v. Sime*, L. R. (1887), 12 H. L. C., 336; *Bartlette v. Crittenden*, 4 McLain, 300, Fed. Cas. No. 1082, are cited. And as presenting analogies to this rule of law the cases of *Turner v. Robinson*, 10 Irish Chancery, 121, and *Albert v. Strange*, 2 De G., S. & M., 652, are noted.

So far as concerns some of the cases the rule is contrary in the United States.

A public exhibition of a painting in Europe for two months in one public gallery and during the following summer in another, without any notice of copyright, amounts to a general publication.

Pierce & Bushnell Manufacturing Co v. Werckmeister, 18 C. C. A., 431.

With reference to the rule relating to dramatic entertainments and lectures, Judge Putnam, in the case of *Ladd v. Oxnard*, 75 Fed., 731, makes the following comment:

"The determinations of various courts, that, under some circumstances, the delivery of lectures, or the representation of plays, to such of the public as may attend, do not constitute publication, must be regarded as rather of an incidental character, arising undoubtedly to some extent from tenderness for authors, and not establishing any general rule."

We should assume that a soulless corporation of the character of the board of trade could with difficulty invoke a similar spirit of judicial "tenderness."

Assuming the cases cited by appellee all present a sound rule of law, the analogy wholly fails, even from the results of these very decisions. In the first place, because the play and the lecture are the result of individual labor and authorship, for which, as Judge Putnam says, the courts have a tender consideration. The second is that any person who pays to attend a play may freely use all of such play as he can remember in another dramatic representation. The person who attends a lecture may appropriate to himself all of the ideas and thoughts and knowledge and suggestions contained in the lecture; and finally, whatever restriction obtains is to a reproduction of the manuscript in the exact form in which it has been delivered from the stage or the platform. Finally, in the most essential respect they differ because there has been no general publication, but a sedulous attempt at restricted publication, whereas here, as we have seen, these market reports have been given the widest publicity.

The other cases cited in support of the right of property are the following: *Kiernan v. Manhattan Tel. Co.*, 50 How. Pr., 194; *Exchange Tel. Co. v. Gregory*, L. R. (1896), 1 L. Q. B., 147; *Board of Trade v. Thompson Com. Co.*, 103 Fed., 902; *Board of Trade v. Hadden-Krull Co.*, 109 Fed., 705; *Cleveland Tel. Co. v. Stone*, 105 Fed., 794.

Before commenting upon the cases originating in the courts in this country, we desire to call attention to the English case above cited as totally without precedent in the United States and as against the established rule of law here. It appears from the case (p. 155) that the information or price current for which one newspaper had bargained was information which might be, under the copyright law of Great Britain, copyrighted. Therein the case is inapplicable here, because by the decision in *Clayton v. Stone*, Fed. Cas. 2872, such matter is not the subject of copyright in the

United States. This counsel for appellee admitted below, and made that the strong point of his argument that the court should invent some principle of law which should afford the board protection. No rules of property in any true sense are discussed in this case. The action was one for the infringement of copyright. The language is too obscure and general to be of any authority in this contention, based upon original principles.

The American cases cited will be found upon examination to be judgments of courts of first instance, in which the fundamental principles of property have in any of them received the slightest, if any, consideration.

The case of *Kiernan v. Manhattan Tel. Co.* is simply that of a news agency which has at large cost to itself gathered news to be given to particular subscribers who pay for the service, seeking to prevent another news agency selling the fruits of its labor in that behalf, and entering into a rivalry with it among its own customers—a case that is in no sense analogous to this.

But against this case and all related cases above cited we desire to cite the recent case of the *Tribune Company of Chicago v. The Associated Press*, 116 Fed., 126—a decision given by one of the judges who, as we have before said, assumed without argument that the board of trade had a property right in these quotations: Judge Seaman. The case is instructive. The Chicago Tribune Company, by agreement, secured the right to use parts of the special wire dispatches and editorials of the London *Times*, which newspaper under the laws of England might be, and was, copyrighted in England in its entirety. The *Times* abandoned in favor of the *Tribune*, using the language of its contract, "any copyright in these telegrams so far as publication in America is concerned." The selections were made and cabled from the *Times* office and were published in the *Tribune* on the same morning as in the *Times*, though some

hours later. A copy of each issue of the *Tribune* was deposited as a copyright as an entirety.

"Held, that this was not such a copyright of the special matter obtained under the contract, nor such a simultaneous publication as to give the *Tribune* the exclusive right under the statute to publish the same in the United States and that it was not entitled to an injunction to restrain the Associated Press from taking such matter from the columns of the *Times* after its publication in England and furnishing the same by cable to other American papers in which it was published on the same morning as in the *Tribune*."

The court says in the body of its opinion (p. 127):

"The questions thus raised are important and novel, involving on the one hand the rights of the *Tribune* Company to the fruits of its enterprise and expenditure under its contract arrangement with the *Times*, and, on the other hand, the rights of the public to news matter thus published in the leading English newspaper. Solution of the inquiry depends upon a construction of the copyright statutes of the United States, *and not upon the common-law rights of literary property* beyond their consideration in construing the statute. Literary property is protected at common law to the extent only of possession and use of the manuscript and its first publication by the owner, a right well exemplified in *Publishing Co. v. Monroe*, 19 C. C. A., 429; 73 Fed., 195; 38 U. S. App., 410. With voluntary publication the exclusive right is determined at common law, and the statutory copyright is the sole dependence of the author or owner for a monopoly in the future publication. Unless the United States statute is applicable to protect the *Tribune's* publication in question, it is clear that the motion for an injunction must fail."

It would be difficult to see how any claim of restricted publication could be made applicable to a price current or financial news as it is described in the Kiernan case, and not sustained in favor of the *Tribune*. The *Times* publication was protected in London by copyright. It released from that copyright certain portions of its paper. It could not be reproduced in England without the consent of the

Times. It released it restrictedly to the *Tribune* only and the *Tribune* paid a price for it as if for a manuscript, and it was then sent as an unpublished manuscript to the United States. If the interests of the public, as suggested by Mr. Judge Seaman, were of higher consideration than the interests of the *Tribune* in that case, we do not see why they should not be in the case at bar.

This last decision, which we submit is irreconcilable with Judge Seaman's prior decision in the board of trade case in 109 Federal, suggests at least this commentary: That these authorities are only available in so far as they present persuasive argument to this court. Singly or in gross they do not furnish a mass of precedent of any value to the determination of this case. There having been no consideration of this very important question by any court of last resort in the United States, the board of trade is in a poor position to invoke the doctrine of *stare decisis* from *nisi prius* decisions. But if *nisi prius* decisions are to be considered at all, as having any weight as authority, we desire to put against those that are cited by appellee's counsel the decision of Judge Tuley, from which copious extracts are made in the note by Mr. Adelbert Hamilton to the Bryant case, *ubi supra*.

In conclusion upon this question of property, we cannot too strongly urge upon the court that it is not a thing to be merely assumed. Appellee's counsel admits that the right that it asserts and asks to have protected is not within the terms of the copyright law, nor is it covered by the principles of the common law. It seems to us that this is a practical confession of the inconsistency of the thing which he contends for. He must maintain his right, if at all, not upon the notions of *nisi prius* judges that some abstract rule of right or justice will be subserved by granting a right of property in these quotations to the board of trade, or that a moral reformation will be forwarded, which seems to be the moving influence governing Judge Blodgett's decision

in the Bryant case. If the board of trade has this right at all, it must be ultimately referable to some well-settled principle of the common law; some just and rational analogy not only persuasive but coercive upon this court. This court has no right to legislate in behalf of the board of trade and declare that to be a right which all the guiding principles of the common law deny.

II.

Assuming a right of property in the board to these quotations, they have from long, free, and unrestrained usage become a matter of general commercial necessity and have become impressed with a public interest and use. The board of trade is estopped from discriminating with reference to such public use.

As heretofore noted, the supreme court of the State of Illinois, the State in which the board of trade was created and by the laws of which it exists and operates, has held that by long use by the public under the permission of the board of trade to telegraph companies to freely disseminate these quotations, the same have become impressed with a public use or trust, and that so long as the board of trade either disseminates or permits the same to be disseminated it must deal with the public in this behalf freely and without discrimination.

New York, etc., Exch. v. Board of Trade, 127 Ill., 153; 19 N. E., 855.

In *American Live Stock Commission Co. v. Chicago Live Stock Exch.*, 143 Ill., 239; 32 N. E., 282, the supreme court again recognized and confirmed this public duty of the board of trade under its charter, and again declared to the same effect in *Board of Trade v. Central Stock & Grain Ex-*

change, 196 Ill., 396; 63 N. E., 740, 744. This must, therefore, be accepted as the settled opinion of that court.

Counsel for appellee asserts that these decisions are not controlling authority upon this court; that they merely enunciate a principle of general law, upon which the Federal courts reserve an independent right of judgment. No argument in support of this contention was presented in the court below nor any authorities cited which, fairly considered, support it. For the purpose of our argument it is not necessary for us to be tenacious upon this point, but we cannot forbear directing the court's attention to it in passing.

The creation of these quotations and their dissemination are pursuant to the powers that were conferred upon this corporation by the State of Illinois. It follows that any assertion of right flowing from the exercise of such powers must be referable to this grant. Assuming for the purpose of the argument the property right in the board of trade, it can only claim such right as an incident of the powers granted by the legislature of the State of Illinois. It needs no argument to differentiate a case of this sort from *Burgess v. Seligman*, 107 U. S., 20, or *Olcott v. Supervisors*, 16 Wall., 678. In defining and limiting the powers granted under a State charter, the decisions of the State court of last resort are not merely persuasive, but coercive upon the Federal courts.

Sioux City, etc., R. R. Co. v. N. A. Trust Co., 173 U. S., 99, 107, and cases cited.

San Diego, etc., Co. v. Souther, 32 C. C. A., 548; 90 Fed., 164, and cases cited.

The only exception to this rule that can be conceived is when the rights of third parties have accrued under a common interpretation of such powers before such judicial decision has been made.

But the argument which we are about to make is not limited to the rule of decision by the supreme court of Illi-

nois except in so far as it is in line of general authority. It is asserted by appellee's counsel that the *creation* as well as declaration of a public interest in the business dealings of a private person or corporation with the public is an exclusively legislative function; that the courts are powerless to declare the fact, and to judicially act upon it, except in pursuance of a legislative declaration and regulation. Indeed, he goes further and asserts that even the legislature could not impress these quotations with a public use by a legislative enactment. We quote from the brief filed with the court below as follows (p. 54):

"We do not here overlook the fact that the duty to serve all alike has, as respects certain classes of persons, as, for instance, common carriers, been derived from the common law, and not from legislative act. We do, however, contend, that there was no common law imposing upon the Chicago Board of Trade any duty respecting these quotations or in any way restricting its absolute property right therein, and that in the absence of such common law, such restriction must come from the legislature, and any such restriction by the courts is depriving the board of trade of its property without 'due process of law.' We also contend that even the legislature could not stamp these quotations with a public use; but it does not, especially in view of the length of this brief, seem necessary to discuss that here. Hence the Federal rule as to these quotations is correct, and any restrictions on their sale is illegal."

The court will note the seeming inconsistency in this statement that the legislature is powerless to declare any of the business of the board of trade to be impressed with a public use. This would seem to go to the extent of asserting that the facts contained in the bill and the admission of the record do not involve the necessary public interest to impress such business with a public use. If the language of counsel means anything at all, it must mean that the proposition involves an element of *fact* determinable from the nature of the business itself; that this *fact* must exist as a

necessary condition precedent to action of any department of government, whether legislative or judicial. We are entirely content to accept this as the test for determining the existence of a public use.

There are certain principles applicable to a just conclusion of the question and which are to be gathered from the books. We have formulated them as follows:

Any business, whether carried on by a quasi-public corporation, a private corporation, or an individual in his own right, becomes impressed with a public trust when so used "as to make it of public consequence and affect the community at large."

Second. Whether any private property or business has become so affected is a judicial question in all cases, and must be ultimately determined by the courts.

Third. The fact must exist that such property or business has become thus affected, and the courts are the exclusive arbiters of the existence of such fact.

Fourth. The legislature has no power to primarily or finally determine that a property or business is impressed with a public use, and is therefore subject to legislative regulation. The question of the rightfulness of the legislative determination in that behalf is at all times referable to judicial decision, and the courts must finally pass upon it. Any attempt on the part of the legislature to impress property or business which lacks the necessary element of public necessity and use with a public trust is absolutely null and void.

Fifth. The facts which impress a business with a public trust and the correlative duties and obligations on the part of the owner of such business or property in his dealings with the public are governed by the principles of the common law, and the duties and obligations of the public which ensue may be enforced by the courts in the absence of legislative enactment.

The fundamental reason for judicial interposition has no reference to the kind of business—as, for example, whether it be a grist mill, a wharf, or a railroad or a public conveyance. It applies to any business so related to public use or necessity, for the sole purpose of preventing a monopoly and the oppressions and wrongs to the public thereby resulting. We shall presently analyze the business of the board of trade with reference to these quotations and the interests of the public therein, but content ourselves at this stage of our argument in asserting that, tried by the tests of these principles, the board of trade is subject to judicial control in its dealings with the public or any portion thereof. It may not discriminate as to the terms and conditions upon which these quotations will be supplied or restrict their use to particular individuals or impose unreasonable conditions and restrictions in their free enjoyment by the public.

The rule relating to the rights of the public in a business that has become impressed with a public trust is general in its application and affects all property and business in which the public may acquire such interest.

The rule as stated in *Munn v. Illinois*, 94 U. S., 126, is of universal application and stands to be applied to any property or business that may be found within its just application at any time. There has been no clearer statement of this

rule than was made by Mr. Chief Justice Waite in that opinion, and for the convenience of the court we put it here:

"*Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large.* When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use, he must submit to the control."

Munn v. Illinois and related cases involve no new doctrine. They are but expositions of known principles of common law, which have never failed or become obsolete in their enforcement applied to the complicated and novel conditions of modern life. This is made clear by the case itself, which draws its illustrations and precedents for the most part from old cases in England and in this country.

At common law the institution of a market was deemed a matter of such universal concern to the commonwealth that no person could lawfully hold a market unless it were by grant from the king, or by prescription which supposes such grant, and if any person set up a market without such authority, a *quo warranto* would lie against him.

Bacon's Abridgment, "Fairs and Markets."
12 Petersd. Abr., 553, note.

Every person had of common right the liberty of going into the market for the purpose of buying and selling.

Mayor, etc., v. Ward, 2 Strange, 1238.

The public nature of a hotel, which is but a modern name for an inn or a public house, is so well known that it does not need authority.

In *Bolt v. Stennett*, 8 T. R., 606, the court refers to what Lord Hale said in his treatise *De Portibus Maris*, as follows:

"If the king or the subject have a public wharf, unto which all persons that come to that port must come and unlade or lade their goods, as for the purpose, because they are the wharves only licensed by the king, according to the statute I Eliz., c. 11, or because there is no other wharf in that port, as it may fall out where a wharf is newly erected, in those cases there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, etc. Neither can they be enhanced to an immoderate rate, but the duties must be reasonable and moderate, though settled by the king's license or charter. For now, the wharf and crane are affected with a public interest, and they cease to be *juris privati* only. As, if a man set out a street in new building on his own land; it is now no longer barely private interest, but it is affected with a public interest."

In *Allnut v. Inglis*, 12 East's T. R., 527, the principle was enunciated that:

"Where private property is, by the consent of the owner, invested with a public interest or privilege for the benefit of the public, the owner can no longer deal with it as private property only, but must hold it subject to the rights of the public in the exercise of that public interest or privilege conferred for their benefit."

In *Sandford v. Catawissa R. R. Co.*, 12 Harris, 378, 380, the supreme court of Pennsylvania said:

"The special stipulations inserted in charters for the purpose of securing these rights are placed there in abundance of caution and affirm nothing more than the common right to equality which should exist independently of such provision. * * * The supposed necessity for such provisions in charters granted in this country and in England prove nothing more than that the law-makers in both countries were aware of the difficulty in holding large corporations to those common obligations of justice which individuals feel bound to acknowledge without legislative enactment."

"The charter of the defendants authorized them from time to time to charge, demand and receive such rates or tolls for compensation for the use of their road and motive power and the transportation of passengers, merchandise and com-

modities as to the president and directors shall seem reasonable, not exceeding the maximum prescribed. There is no expressed stipulation that the rates and charges shall be equal to all who may offer goods for transportation over the road. Such stipulations are common in English railway charters and they are found in some charters of railway companies in this country. They are, however, but declaratory of what the common law is. It was so said in *Sandford v. Catawissa R. R. Co.*, 12 Harris, 378, and there is certainly good reason for denying such companies the power to discriminate between persons offering goods for transportation. It seems to be implied in the power given them to establish reasonable rates that the rates must be fixed equally and impartially."

Shipper v. Pa. R. R. Co., 47 Pa. St., 338.

Speaking of the statute requiring railroads to take and transport passengers and property, the supreme court of Texas, in *Houston & Texas C. Rwy. Co. v. Smith*, 63 Tex., 326, says:

"A general duty is here imposed upon railroad companies to furnish sufficient accommodations for transportation of all property that may be offered. This is, however, but declaratory of the common-law liability of carriers. Aside from these statutory provisions, it would be the duty of the carrier to provide all necessary facilities and means of transportation of such property as might be offered, at least to the extent that would ordinarily be expected to seek transportation by the particular line. * * * In the exercise of the duties which relate to the public, these companies must, upon general principles, deal alike with all customers."

"Wharves, docks, piers, quays and landing places, may be either public or private, according to the use to which they are devoted, although the property may be owned by private persons. Private property, if devoted to a use in which the public have an interest, becomes public and subject to public control."

Chicago Dock Co. v. Garrity, 115 Ill., 155.

"The main contention of appellant is that its wharf is a private wharf, and under the control of the owner, and that

it has a right to determine for itself with whom it will do business; and counsel confidently cites section 2136, 1 Hill's Code, in support of this position. That section is as follows: 'Any person owning land adjoining any navigable waters or water-course, within, or bordering upon this State, may erect upon his own land any wharf or wharves, and may extend them so far into said waters or water-courses as the convenience of shipping may require; and he may charge for wharfage such rates as shall be reasonable; provided, that he shall at all times leave sufficient room in the channel for the ordinary purposes of navigation.' The first part of this section confers a license upon the owner of lands adjoining navigable waters to extend any wharf erected upon his own land into said waters, but the latter part of the section, viz., that 'he may charge for wharfage such rates as shall be reasonable,' is a limitation merely. The section, as a whole, while it recognizes the right of private ownership in wharves, cannot be construed to mean that such private property may not be devoted to such use as will, in contemplation of law, make it partake of the nature of a public wharf. Upon this question it was said by the Supreme Court of the United States in *Dutton v. Strong*, 1 Black. 32, that 'Piers or landing places, and even wharves, may be private, or they may be in their nature public, although the property may be in an individual owner; or in other words, the owner may have the right to the exclusive enjoyment of the structure, and to exclude all other persons from its use, or he may be under obligation to concede to others the privilege of landing their goods, or of mooring their vessels there, upon the payment of a reasonable compensation as wharfage; and whether they are the one or the other may depend, in case of dispute, upon several considerations, involving the purpose for which they were built, the uses to which they have been applied, the place where located, and the nature and character of the structure.' In *Gould, Waters*, sec. 119, the author lays down the proposition, and supports it by a great array of authorities, that 'when wharves belonging to individuals are legally thrown open to the use of the public, they become affected with a public interest, and the wharfage must be reasonable.' The proof in this case shows that numerous steamers landed at appellant's wharf daily, discharging passengers and baggage, as well as freight, from different ports in the waters of Puget sound and else-

where; and it also shows that the appellant receives the sum of 25 cents per ton for every ton of freight going out or coming in over said wharf. We think that the language of the court in *Munn v. Illinois*, 94 U. S., 113, is applicable here, viz., that appellant stands 'in the very gateway of commerce, and takes toll from all who pass.' *In re* The Kate Tremaine, 5 Ben., 62, Fed. Cas. No. 7622, it is said: 'A wharf is a necessity of modern navigation, and of navigation alone. The sole object of its erection is to facilitate the transportation of passengers and freight upon navigable waters. * * * Every vessel has a license to use, for her safety or convenience, any public wharf on navigable waters, upon paying reasonable wharfage.' We think that, in determining the character of appellant's wharf, regard should be had to the use to which it has been devoted, rather than its private ownership, and that upon the facts found the position of the appellant cannot be maintained. As well might the proprietor of a stage coach claim the right to discriminate upon the ground that the property employed in his business was private property. The doctrine, if maintained, would tend to promote and further monopolies, which it is not the policy of our law to favor. The decree will be affirmed."

Barrington v. Commercial Dock Co., 45 Pac. 749; 15 Wash., 175.

One of the best reasoned cases is that of *State ex rel. Payne v. Kinloch Tel. Co.*, 67 S. W., 684, decided by the court of appeals of Missouri. We quote from the opinion in that case:

"In the cases above named, the duty of an incorporated company operating a telephone system in a certain locality to treat all citizens of that locality alike, and to give them all equal privileges in regard to the use of the system by entering into contracts with them and installing instruments on their premises, is recognized and upheld, as well as the power of the courts to compel the observance of this duty by a writ of mandamus. Some of the decisions are founded on statutes more or less positively prescribing the duty, and others on the common-law rule that a common carrier, or other company or person holding itself out as ready to serve the public at large in

some business intimately and essentially associated with the general social and business life of the community (especially if such person or company is operating under or enjoys some advantage or franchise from the State,) is bound to serve every member of the community without discrimination or partiality; and some of the decisions which are supported by a statute declare the power to enforce the obligation would exist, if there was no statute, by virtue of the principles of the common law, of which the statute is said to be declaratory (*Telephone Co. v. Bradbury*, 106 Ind., 1; 5 N. E., 721). The duty thus imposed on telephone companies is in no sense novel, nor did its application to them involve a new principle; for their business plainly falls, by its very nature, within the class of quasi-public employments, as to which the courts have never hesitated to restrict in some measure the right of contract for the common welfare and upon considerations of public policy. Telegraph and telephone companies are regarded by the courts as performing functions similar to those of railway, steamboat, and express companies, which conduct a general carrying business, and have always been subject to governmental supervision and regulation exercised both by legislation and judicial decisions (*Vincent v. Railroad Co.*, 49 Ill., 33; *Buffalo E. S. R. Co. v. Buffalo St. R. Co.*, 111 N. Y., 132; 19 N. E., 63; 2 L. R. A., 284). Indeed, the same abridgement of the right of contract is applied to other persons or corporations than carriers, if engaged in employments of a public character, such as inn-keepers, warehousemen, mills, bakers, gas and water companies, and perhaps still others (*Munn v. Illinois*, 94 U. S., 113; 24 L. Ed., 77; *People v. Budd*, 117 N. Y., 1; 22 N. E., 670, 682; 5 L. R. A., 559; 15 Am. St. Rep., 460; *Budd v. New York*, 143 U. S., 517; 12 Sup. Ct., 468; 36 L. Ed., 247; *American Waterworks Co. v. State*, 46 Neb., 194; 64 N. W., 711; 30 L. R. A., 447; 50 Am. St. Rep., 610; *Smith v. Telegraph Co.*, 42 Hun., 454; *State v. Joplin Waterworks*, 52 Mo. App., 312; *Shepard v. Gaslight Co.*, 6 Wis., 539; 70 Am. Dec., 479; *People v. Manhattan Gaslight Co.*, 45 Barb., 137; *Waterworks v. Schottler*, 110 U. S., 347; 4 Sup. Ct., 48; 28 L. Ed., 173; *Brass v. North Dakota*, 153 U. S., 391; 14 Sup. Ct., 857; 38 L. Ed., 757; *Mayor, etc., v. Yuille*, 3 Ala., 137; 36 Am. Dec., 441. Most of such cases deal with the constitutionality of statutes passed to regulate and control the conduct of certain employments; others were interferences by the courts

by writs of injunction or mandamus. It is impossible to extract from them any one principle which will explain and support all the decisions in which the circumstances were held to warrant a restraint on a defendant's right to conduct his business as he pleased, or every one in which they were held insufficient and relief was denied. Ponderous reflections on the opposed political theories of liberty and paternalism, with which they abound, serve too often only to disclose the intellectual bias of the judge who wrote the opinion, while constructions of constitutional powers and limitations have produced haphazard and contradictory results, depending more on whether the deciding tribunal deemed the regulating statute reasonable and wholesome or meddlesome and mischievous than on its clear violation of a constitutional inhibition. In fact, our fundamental principles are not threatened or questioned in any of these curtailments by courts or legislatures of unhampered individual action, because they are made to subserve, rather than destroy, free contractual rights, since they commonly are directed against extortionate or arbitrary conduct by persons, corporations, or combinations either possessing or thought to possess some monopoly or other advantage enabling them to dictate terms. That is the motive of enactments and the reason of decisions of this character, and the vital question seems to be always, whether any particular interference is justified by the existence of a condition which precludes the members of a community from negotiating for fair terms, or forces them to dispense altogether with the service rendered by the party complained of (although their welfare imperatively requires that service), unless relieved by the interposition of the public authorities. Abuses of the contract right must now and then be corrected, and they will require correction more frequently as population grows dense and commercial activities multiply.

"The right to interfere by statute or judgment is placed on several grounds: First, the bestowal by the State of some extraordinary franchise or attribute, under which the party to be restrained is operating,—as in the case of railway and other companies enjoying the right of eminent domain; second, the possession of a legal monopoly, either directly granted by the State or developed from a privilege granted by it,—like licensed State lotteries and railway pools; third, possession of a virtual monopoly on account of the nature

of the business,—like the warehouses whose charges were held to be subject to regulation by government in *People v. Budd, supra;* or, fourth, simply because the business is one which closely concerns the public welfare,—like inns or grain elevators, as in *Brass v. North Dakota, supra.* An examination of the decisions shows that the right to curtail the freedom of contract by compulsory measures on the part of the sovereignty through any of its branches is not exclusively nor always exercised in either of those instances, neither where the party restrained is the donee of a valuable franchise, nor where a monopoly, legal or actual, exists, nor where the party against whom relief is invoked operates a business of great magnitude, and heavily influencing the prosperity of the community,—yet at the same time has been exercised in all such cases. In other words, the ground of this public interference with business affairs is not well settled; but the underlying principle is the right of the people, acting through their legislative representatives or their courts, for the good of the Commonwealth, to set bounds to the arbitrary conduct of a natural or corporate person or combinations of either, whenever that conduct becomes intolerably oppressive and mischievous; while at the same time conceding to everybody the prerogative to make such contracts and enter into relations with persons as he chooses inside those bounds."

Without quoting at length and needlessly encumbering our brief from other authorities, we will append a citation of them and invite their careful consideration by the court. It is to be observed that they repeat over and over again the language of the Supreme Court in *Munn v. Illinois*, as defining the origin and source of power, whether exercised by legislatures or courts, in the control and regulation of corporations or individuals devoting their property to a public use:

State ex rel. v. Gas Co., 34 Ohio St., 572, 578.
Lindsey v. Anniston, 104 Ala., 261; 16 So., 545.
People v. King, 110 N. Y., 418, 428.
Rushville v. Rushville Gas. Co., 132 Ind., 575; 28 N. E., 853.

Zanesville v. Zanesville Gaslight Co., 47 Ohio St., 1; 23 N. E., 55.
White v. Canal Co., 22 Colo., 198; 43 Pac., 1028, 1030.
Spring Valley Waterworks v. Schottler, 110 U. S., 347, 354.
Louisville, E. & St. L. Consolidated R. Co. v. Wilson, 18 L. R. A., 105; 132 Ind., 517; 32 N. E., 311; 18 L. R. A., 105.

The circumstance that the business is a virtual or natural monopoly is given peculiar significance in some of the decisions:

State v. Edwards, 86 Maine, 105; 29 Atl., 948.
State v. Loomis, 115 Mo., 307; 22 S. W., 356.

Many of these authorities are gathered together and excerpted from in that very valuable compilation called "Rose's Notes to the United States Supreme Court Reports," in his note to the decision in the case of *Munn v. Illinois*. The learned author of that work, after citing these cases, has made a guarded and careful statement of the principles to be deduced therefrom. Its very caution and moderation commend it to the approval of the court. As fairly but cautiously stating the deduction to be drawn from this mass of judicial decisions, we herewith append it:

"It may be observed in conclusion, that the question whether a business has been rendered subject to public regulation because affected with a public interest, is ultimately, at least, a judicial question for the courts to decide. In a sense, it is a question of fact, since the decision of each particular business or employment must always depend upon its nature and the circumstances under which it is conducted. But this does not mean that precedents would count for naught. On the contrary a slavish adherence to precedents in so delicate a matter is rather to be expected; and it would doubtless weigh heavily against declaring a particular business to be affected with a public interest that it had never in all the history of the law been so declared. If it be urged in criticism that the judicial discretion con-

templated by this principle vests too much power in the courts, since the discretion of a judge is said to be 'the law of tyrants,' the answer is that the same criticism may be applied to the principle upon which courts are wont to determine the propriety of all other regulations imposed under the authority of the police power. And just as the propriety of other police regulations rests upon ultimate necessity, the power of the State to 'govern men and things,' so it may be said that the Munn doctrine rests upon this same consideration of public necessity, and is to be applied subject to the wise restriction that it is, so to speak, 'for use in case of emergency only.'"

The learned counsel for appellee seems to regard the common law as confined to the subjects upon which it operates, without reference to the principles which it declares, and seeks to limit it to the things of ancient origin and to confine judicial supervision of the rights of the public to instances which may be found in the year books and such volumes of reports as were published before the formation of this Government. His averment that "there was no common law imposing upon the Chicago Board of Trade any duty respecting these quotations, or in any way restricting its absolute property right therein," if it have any meaning at all, must mean that there is no ancient decision classifying the board of trade with reference to its quotations with wharfingers, stage coachmen, warehousemen, and innkeepers. This was the very contention in *Munn v. Illinois*, that elevators situated as these elevators were, as Chief Justice Waite said, "in the very gateway of commerce," had nothing whatever to do with the transportation of commodities between the States, and therefore were not subject to regulation, assuming thereby that the power of regulation at common law had no application whatever to them. The burden of the Chief Justice's argument is to show in contravention that they are subject to the rule of the common law, and of necessity that the rule of the common law applies to them without reference to legislation. If they are not within the terms of the common law,

as we shall presently see, the legislation would be absolutely void.

In considering this very question, the learned presiding justice of this court, sitting as a circuit judge, clearly elucidated this rule in the case of *State of Missouri ex rel. Baltimore & Ohio Telegraph Co. v. The Bell Telephone Co.*, 23 Fed., 539. The suit was one to compel the Bell Telephone Company of Missouri to afford the same telephonic privileges to the Baltimore & Ohio Telegraph Company that it did to the Western Union Telegraph Company. The company set up in opposition to the demand that it was the licensee of the American Bell Telephone Company, a Massachusetts corporation, in the use of the telephone in its business, and by the terms of such license it was not permitted to establish telephonic connection with any telegraph company other than one which should be permitted by the licenser, the holder of the patent, the Massachusetts company; that such licenser had permitted telephonic communication to be established with the Western Union Telegraph Company alone.

The points of analogy between that case and the one before the court here are too apparent to need elaboration. The question as stated by the court was whether the court could compel the defendant, doing the telephonic business of St. Louis, to establish communication with any other individual or company than that permitted by its license from the patentee. In answer, Judge Brewer said (p. 540):

"I believe fully in the sacredness of property; but I think all property stands upon an equal basis, whether that property consists of gold dollars in your pocket, real estate, or the ownership of a patent. There is no peculiar sanctity hovering over or attaching to the ownership of a patent. It is simply a property right, to be protected as such. Starting from that as a basis, while every property-owner may determine for himself to what he will devote his property, yet the moment he puts that property into what I perhaps may, for lack of a better expression, define as the channels of commerce, that moment he subjects that property to the laws

which control commercial transactions; just as in the warehouse cases (*Munn v. State of Illinois*, decided by the Supreme Court of the United States, and reported in 94 U. S. 113), in which that court held that when an individual built a warehouse, and put his property into that kind of business, he subjected the property thus placed to the laws which controlled the transactions of commerce, involved in which was the power of the public, through the legislature, to regulate rates. No man holding property was bound to build a warehouse, or bound to put his property into that particular channel, but the moment he did so, he put it where the legislature could say 'You may charge so much, and no more, for the transaction of this business.' He put his property into the channels of commerce,—as multitudes are doing,—into the railroad business, into the express business, and into other channels of commerce. Whenever the property is put into those channels, it is put within the power of the public, speaking through its legislature, *or the power of the court enunciating general rules operative upon such transactions, to modify leases, modify licenses, control duties.* So, notwithstanding this licenser has given to the licensee the right to establish a telephonic system in the city of St. Louis, with telephonic communication with only certain prescribed telegraph systems, the moment it permittod the establishment of a telephonic system here, that moment it put such telephonic system within the control of the State of Missouri, and the control of the courts, enforcing the obligations of a common carrier.

"The moment it establishes a telephonic system here, it is bound to deal equally with all citizens in every department of business; and the moment it opened its telephonic system to one telegraph company, that moment it put itself in a position where it was bound to open its system to any other telegraph company tendering equal pay for equal service."

Although the court stated that this case would be finally settled in the Supreme Court of the United States, assuming that it would be appealed, we have been unable to find any record of appeal. It is to be presumed, then, that the American Bell Telephone Company of Massachusetts, acting through its licensee, was content to accept the decision of Judge Brewer as a just exposition of the law.

In the case of *Cotting v. The Kansas City Stock Yards Co.* 183 U. S., 79, the question was whether persons engaging in the business of yarding and feeding stock at a particular point, preparatory to and incident to their marketing and sale, were engaged in a business that was so impressed with a public use that the legislature had the power to regulate the prices for feed and care of the cattle thus yarded. It may be said that this, as is true of a majority of the cases, is one arising from a denial of the validity, upon constitutional principles or otherwise, of legislative regulations of property which has by the volition of its owners become impressed with a public use; but it does not thereby appear that the judicial exercise of power with reference to property thus impressed is confined to a consideration of the validity of legislative regulations. On the contrary, in the case of *Cotting v. Kansas City Stock Yards Co.* several of the cases which we have already cited, where judicial action was not predicated upon precedent legislative regulation, but was original and exclusive in the court making the decision, are indiscriminately cited as authority for the principle; so it seems to be apparent upon the face of things, at least, that that court takes it for granted that the public control referred to in the rule is a control that may be exercised by any of the departments of government within the ordinary purview of their respective authority. In fine, the test in the end is the use to which the property is put, and not whether some coordinate department of government has acted with reference to the result flowing from such use.

We recognize the clear distinction between legislative and judicial powers. We are not asserting a right in the courts to prescribe permanent regulations concerning property, even though impressed with a public use—as, for example, tariffs and tolls to be charged by common carriers. This has always been held to be and is a legislative function. But no question of that character is involved here. The question at issue relates to the rights of the parties before

the court to the use of property said to be impressed with a public trust. The appellee is seeking the aid of a court of equity to further and secure a monopoly in that property which the appellants contend is a matter of urgent public necessity and which has become impressed with a public use. The court necessarily is compelled to determine this *fact*. If the appellants' contention as to the character of the property be correct, it is certainly within the narrowest limitation of power for the court to *enforce the duty which arises from that fact*. The court does not create the duty; it flows from the fact. It is obvious, then, that the function of the court is strictly judicial, whether it is administering a positive enactment found in a legislative statute or a principle obtaining at the common law.

The legislature is without power to create a public use by legislative declaration, or to finally determine by the exercise of power of regulation, or otherwise, that property is so impressed.

As we have repeatedly urged in this argument, whether property is to be treated as impressed with a public use is in all instances referable to its nature and to the use which the owner makes of it, and is in every instance a judicial and not a legislative question. This is made clear by the numerous cases where the legislature has sought to impose a public user and to affect with legislative regulation certain private property and business. The validity of these regulations and legislative burdens, not alone as to questions of tariffs or matters quasi or purely public in their nature, but as to the question of whether the property might be thus impressed and regulated, has been uniformly submitted to the courts, and the courts have assumed complete power and authority to pass upon such questions. A leading case in this connection is that of *Loan Association v. Topeka*, 20 Wall., 655, 665, 660, 661. In that case it became necessary for the

court to decide whether the business which the legislature authorized municipalities to aid by voting bonds was of a public nature or use which would warrant such aid, or whether it was a purely private business. It was upon this point that the decision went, the court holding that the King Bridge Company, which was aided by these bonds, was a private enterprise and not a public use in any respect and therefore the legislature had exceeded its powers.

The supreme court of Kansas has recognized the same doctrine many times. See *City of Geneseo v. Gas Co.*, 55 Kan., 358; *C. B. U. P. R. R. Co. v. Smith*, 23 Kan., 745, and cases which they cite.

Tried by these principles, these quotations have, from long, free, and unrestrained usage, become a matter of general commercial necessity and have become impressed with a public interest and use.

For the purpose of this argument we shall concede a right of property in the board of trade in these quotations, a right which we believe does not exist. It becomes important, therefore, under the application of the principles which we have adverted to, to consider the extent and nature and the interest of the public in these quotations. Upon this question the facts are undisputed; they are pleaded in the bill, and they are a matter of public history of which the courts will doubtless take cognizance without proof. The bill recites (p. 5):

"And the knowledge of the prices thus made on said transactions during said market hours upon said exchange have become a species of property of such large value to your orator that telegraph companies are willing to pay your orator large sums of money for the privilege of receiving instantaneously said quotations and selling the same to their customers, and many persons throughout the United States who are engaged in the grain and provision business are

willing to pay, and for many years have paid, said telegraph companies large sums of money therefor."

The testimony shows and the bill admits that these quotations were furnished continuously and indiscriminately to the public for many years without any effort upon the part of the board of trade to restrict their use. This was not an accident, but resulted from the deliberate purpose of the board of trade to so foster and permit dealings in these commodities and the use of these quotations as to make the board an influence and power in the mercantile world, and thereby to enhance the business of the brokers who are members of the board. It has succeeded in this probably beyond what were its own expectations. The result is that the miller in the country town cannot buy his wheat to grind in his mill, nor the farmer sell it, without knowing what the ruling prices are for the cereal upon the board of trade in Chicago at the time of the transaction. This is equally true with reference to every commodity which is dealt in by the board. This results not from any legislative fiat nor from any judicial pronouncement. It is a condition flowing from the laws of trade. A legislative declaration either for or against this public use would not alter the dependence of the public upon the quotations. The urgent public necessity is here and will be here, whether courts or legislatures remain silent or act. The most that either of these coordinate branches of government can do is to recognize the already existent fact. The supreme court of Illinois has recognized it, and has most graphically portrayed the growth of this business and its influence upon the entire country. It has become, in the words of Mr. Rose in his notes, "a matter of urgent public necessity." Without a syllable in the bill, without a word of testimony in the record, this court would be bound to take judicial cognizance of it. To withdraw these quotations from the use of the public at large would throw the business of the country into inextri-

cable confusion and produce a public disaster infinitely greater than the Chicago fire. The situation could not be relieved until either a new method for fixing prices and doing this business should be established by the world at large, or until another market place of equal importance to the board of trade should be built up and established for the making and disseminating of quotations. In brief, it is hard to imagine any more extreme illustration of a public need than is furnished by the fact of the dependence of the public in its dealings upon these quotations. In the language of all of the authorities, this property, although owned by a private corporation, is devoted to a use in which the public have an interest. It has become public and subject to public control.

III.

The conditions exacted of the public in the contract with the telegraph companies are unreasonable, unjust, restrictive, and tend to the creation of a monopoly.

We now come in the course of our argument logically to the assertion of that well-founded and universal principle of law so cogently stated by Mr. Justice Brewer in the telephone case above referred to, that if property be given to the use of the public, and thereby impressed with a public trust, the owner of such property must deal with the public with reference to such use equitably and without discrimination. This is a principle that runs through all the cases, but, as illustrating its application, we cite the following:

Kalamazoo H. & B. Co. v. Sootsma, 84 Mich., 194; 47 N. W., 667.

R. R. Co. v. Langlois, 24 Pac., 209; 18 Am. State Rep., 745.

Lindsey v. Anniston, 104 Ala., 261; 16 So., 545.

Lough v. Outerbridge, 143 N. Y., 277.

Cincinnati, etc., R. R. Co. v. Village of Bowling Green, 570 St., 345; 49 N. E., 123.

Applying these principles as the test of the duty which the board of trade owes to the public, it remains to inquire whether it has performed it. The court, in its memorandum opinion, stated that the conditions were reasonable (see page 957). It said:

"The complainant does not wholly deny the Christie Company and Mr. Christie the right to acquire and use the quotations, but it has required the telegraph companies with whom it has contracted for their transmission and distribution, to first secure from every person desiring them a signed application, in which is embodied an agreement that the quotations shall not be used in the conduct of a bucket shop, and that they are for the private and individual use of the applicant and the business in which he is engaged. These conditions are well within the limits of a reasonable exercise of the right of property and power of control over the quotations possessed by the complainant. The defendants, The Christie Company and Mr. Christie, decline to comply with this requirement."

If this were, indeed, the substance of the requirement made by the board, an entirely different case would be presented to this court. Unwittingly, however, the court below totally misconceived not only the literal terms of the contract exacted of applicants for the quotations, but the spirit and object sought to be obtained by the board in making those exactions. Under the contract with the telegraph companies they are required to secure from every one wishing the quotations a signed application and agreement, which is set forth in complainant's bill. Paragraph one of that application describes the prohibited uses to which the applicant agrees he will not devote the quotations. We quote it as follows (p. 11):

"That we are not keeping or causing to be kept, and will not keep or cause to be kept any bucket shop or any office, store or other place wherein is conducted or permitted the

business of making or offering to make contracts, agreements, trades or transactions, respecting the purchase or sale or purchase and sale of any grain, provisions or other commodity or property, wherein both parties thereto or the undersigned contemplate or intend that such contracts, agreements, trades or transactions, shall be, or may be closed, adjusted or settled according or with reference to the public market quotations of prices made on any board of trade or exchange upon which the commodities or securities referred to in said contracts, agreements, trades or transactions are dealt in, and without a *bona fide* transaction on such board of trade or exchange, or wherein both parties or the undersigned shall contemplate or intend shall be or may be deemed closed or terminated when the public market quotations of prices made on such board of trade or exchange for the articles or securities named in said contracts, agreements, trades or transactions shall reach a certain figure."

It is further stipulated that the applications when signed shall be submitted to the board of trade by the telegraph companies for approval or rejection, and the determination of the board is final. Our objection to this contract is threefold:

First. It prohibits the transaction of lawful business by the applicant.

Second. Its object is to secure to the Board of Trade of Chicago and its allied exchanges a complete monopoly of this kind of business.

Third. In view of its manifest purpose to suppress competition of independent traders, the board is disqualified to act as the final and conclusive arbiter of applications from such traders.

We will discuss these objections in their order.

The language of paragraph one of the application quoted is somewhet obscure in describing the business prohibited

to the applicant for the quotations. However, it may fairly be analyzed to cover the following:

(*a.*) All sales or purchases which the parties thereto contemplate adjusting upon the basis of public market quotations but without a *bona fide* transaction of the board of trade. This feature is further elaborated, extending the provisions to all character of dealings, whether sales, purchases, or trades, and also extending the prohibition if the keeper of the place of business shall have such intention, irrespective of what may be the design of the parties to the contract. The gravamen of the offense is that the transaction is not conducted on the board of trade.

(*b.*) A sale which the parties contemplate may be closed when the public market quotations shall reach a certain figure, and this prohibition is again elaborated in the same manner as the other, to include sales, purchases, and trading contracts with reference thereto. Furthermore, they are prohibited whether the intent to so close them is possessed by the parties to the contract or the keeper of the place of business.

One is struck with the studious omission of the essential element of the offense of bucket-shopping or gambling as described by the courts or as denounced by the statutes. For example, under the first class of business prohibited, it will be observed that the words "on such board of trade or exchange" absolutely qualify and limit all the preceding language of the clause. In other words, no matter how absolute the intention of the parties may be to deliver the commodity which they may at that time own, their transaction is prohibited by this contract unless they make their trade upon the board of trade. Indeed, the language is so sweeping as to prohibit even present cash sales and delivery. The miller cannot avail himself of these quotations and buy his wheat from the farmer without the interposition of this mid-

dleman. No reason of public policy can be subserved in requiring the intervention of a broker.

The business of the Christie Grain and Stock Company is largely done between people who are not members of any board of trade, and consequently the necessity for making contracts off of boards of trade with the Christie Company is apparent. This is equally true of every independent dealer and trader. Obviously, their freedom to do so is essential to the success of their business. The customers of these independent dealers buy from them and sell to them large quantities of grain, and these transactions are made off of any board of trade. These dealers in turn do a great deal of business on boards of trade and with members of the Chicago, Kansas City, and St. Louis boards. Their business aggregates many millions of bushels. They might just as well go out of business as to agree that every trade made should be a *bona fide* transaction "*on a board of trade.*"

The carefully worded application, therefore, for the quotations prepared by the Chicago board for applicants to sign is in its last analysis an iron-clad agreement that the applicant will place every trade that he makes on a board of trade. The balance of the agreement in regard to the making and closing of these transactions is a mere pretense and a subterfuge, put in simply to deceive the courts and the people as to the real purpose of the board. Every transaction that is recited in the whole agreement as prohibited can legitimately be made on the Chicago Board of Trade between members at any time.

The court, therefore, was obviously wrong in construing the effect and purpose of this contract as a prohibition against bucket-shopping. We submit that the test, and the only test, as to a gambling transaction is the intention of the parties with reference to a delivery of the commodity. If this intention is lacking, if neither party owns the subject-matter of the trade and has no intention of producing it and making a delivery, but they are dealing in futures merely,

with an intention to close their trade by an adjustment of differences established by market quotations, the transaction is illegal and is so denounced by the statutes of Illinois and by the decisions of the courts. But, on the other hand, if they own the commodity dealt in, or intend to procure and deliver it in consummation of their trade, the transaction is lawful whether it be on or off a board of trade, and whether they are dealing with reference to future prices or not, and whether they subsequently settle and adjust their contract upon a basis of the market quotations without exacting a delivery.

The statute of Illinois provides that:

"It shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept within this State, any bucket shop, office, store, or other place, wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions, or other produce, either on margins or otherwise, *without any intention of receiving and paying for the property so bought, or of delivering the property so sold.*"

1 Starr & C. Ann. St., 1304.

The statute of Missouri is very similar (section 2223, vol. 1, Rev. St. 1899).

In the late case of *Central Stock and Grain Exchange v. Board of Trade*, 196 Ill., 396; 63 N. E., 741–2, the court said, quoting from its former decision in 134 Ill.:

"A consideration of the act will, as before indicated, show that it is directed against the keeping of any office or place, etc., wherein is conducted or permitted the pretended buying or selling of grain or other produce on margins or otherwise, without any intention of receiving the property bought or delivering it if sold."

In *Kent v. Miltenberger*, 13 Mo. App., 503, the court, in speaking of the ordinary grain option contract made on the Merchants' Exchange of St. Louis, said:

"It appears that delivery is always contemplated, not as a thing which will be necesserily insisted upon, but as a thing which the purchaser may insist upon. It sufficiently appears that this is the one thing which gives vitality to such contracts. * * * The circumstance which renders these contracts unlawful is a contemporaneous agreement that they shall not be executed by a delivery but only by a settlement of differences. Unless there is such an agreement, it is idle to talk about gambling intentions or wagering intentions or betting upon the future state of the market."

In *Clark v. Foss*, 7 Biss., 540, it was held that the intention that such a transaction should be a mere bet must constitute an integral part of the contract, and the court said:

"If the contracts were void at all they must have been void when made. The subsequent conduct of the parties may, and should, be considered as evidence tending to show what the real contracts were when entered into; but if they were originally valid, no subsequent act of the parties can have the effect to render them obnoxious to the taint of illegality as being gambling contracts."

"It is the intention of the parties that gives character to a transaction on the board of trade. If either party contracts in good faith, he is entitled to the benefit of his contract, whatever may have been the secret purpose or intent of the other party."

Benson v. Morgan, 26 Ill. App., 22.

To the same effect, see *Edwards B. Co. v. Stevenson*, 160 Mo., 516; 61 S. W., 617.

"While a purchase of stock on margin for speculation is not gambling if it is the intention of the parties that a real purchase shall be made by the broker, though delivery be postponed or made to depend on future conditions, it is otherwise if it is the intention that there be no delivery, but that the account be settled on the basis of a rise or fall in prices."

Wagner v. Hildebrand, 187 Pa., 136; 41 Atl., 34.

"The true test of the validity of a contract for future delivery is whether it could be settled only in money and in no other way, or whether the party selling could tender and compel the acceptance of the particular commodity sold, or the party buying could compel the delivery of the commodity purchased."

Sampson v. Camperdown Cotton Mills, 82 Fed., 833.

"Where the buyer intends that a contract for future delivery shall be an actual delivery, and the seller expects to deliver, *unless the price goes beyond the contract price*, it is not a gambling contract, and does not come within section 3931, Revised Statutes, 1889."

Deierling v. Sloop, 67 Mo. App., 446.

"The settlement between principal and broker and payment of difference in price for which the stock was purchased and sold, has no tendency to show that the transactions between them were wagers."

Winward v. Lincoln, 51 Atl. (R. I.), 106.

This court recognized this same test. (See *Metropolitan National Bank v. Jansen*, 47 C. C. A., 497; 108 Fed., 572.)

See also the recent case of *Clews v. Jamieson*, 182 U. S., 460, 489 to 494.

Without further multiplication of authority upon this subject, therefore, it is clear that every transaction denounced by this provision of the contract exacted from the applicants could be made by the brokers of the board of trade upon the board of trade and would be upheld and enforced in the courts. If this be true, it must follow that such contracts are equally legitimate and enforceable if made between independent dealers without the intervention of a board of trade. There is certainly no particular sanctity hovering over a board of trade which can make transactions lawful there and unlawful if conducted anywhere else.

II. And this brings us to the real reason for this contract by the board of trade, namely, to prevent independent trad-

ing in these commodities and to draw to the board of trade an exclusive monopoly in this business. It is a well-known fact, which appears in this record, that there is an umbilical cord binding all of the boards of trade in the West and South to the Chicago Board of Trade and subordinating their business to the exactions of the Chicago Board of Trade. Any person doing business as a broker or otherwise upon the board of trade is compelled to yield one-half of the customary commission he receives to the brokers of the Chicago board if dealing in commodities covered by those quotations. The customary rate of commission upon all transactions of this character is one-eighth of 1 per cent. One-sixteenth of 1 per cent. goes as a tribute to this self-crowned, self-appointed Cæsar. This is the true inwardness of this exacted contract.

This is further shown in the testimony of the appellant Christie, which stands without contradiction in this record. Referring to a conversation between himself and Mr. Warren, the president, and Mr. Robbins, the attorney of the board, in which Christie sought to bring an end to the persecution with which his business had been followed, Mr. Christie testified (p. 527):

"Colonel Conley wrote me that I had better come over and see Mr. Warren personally, which I did. I saw Mr. Warren together with Mr. Robbins, and offered them one hundred and fifty dollars a month for the market reports and agreed that I would not make a trade in my office that was in any way prohibited by the laws of the State of Missouri. We discussed the question for quite a time and they refused.

"Q. Who discussed it?

"A. Mr. Robbins, Mr. Warren and myself, and it resulted in their refusing to give me the quotations unless I would agree that every order I got I would place on the board of trade. That I would not agree to."

We have heretofore pointed out the nature of the business of the Christie Grain and Stock Company, as well as that of

every other independent dealer, and have shown that an exaction of this character would effectually drive all such business out of the market. If they are to become mere adjuncts of the board of trade and compelled to pay tribute to that institution for every dollar's worth of business they may transact, irrespective of where it is done, it results in furthering and creating a most gigantic monopoly in the dealing with these essential elements of commerce. It divides the entire public into two classes, namely, the board of trade and its allied institutions and those not so connected or related. The former can freely buy, sell, and deal in these commodities; the latter may not do so under any circumstances or conditions whatsoever.

This presents the case to the court in all its naked deformity. It is an appeal to the equitable jurisdiction of the court to enable the Chicago Board of Trade to create and maintain a monopoly. This we do not believe it is within the equitable powers of the court to do. This we are confident the court will not do. In view of this inevitable purpose of this suit, after the mask has been removed, it is not a matter of wonder that in both his pleading and his argument the counsel for the board of trade has sedulously sought to conceal the true nature of this contro. versy. The late Matthew H. Carpenter used to frequently repeat a saying which is peculiarly applicable to the case in hand: "A lawsuit is seldom or never what it seems to be." Upon the face of this bill its purpose is a very just and worthy one, namely, to prevent bucket-shops having the tools with which to ply their illegal trade. Its real purpose and object, as we have seen, is to restrict and prevent independent trading and to compel all transactions to be made upon the board of trade. We challenge the counsel for appellee to show otherwise.

III. In direct furtherance of this plan and design of the board of trade to create a monopoly is that provision of the

contract with the telegraph companies which requires them to submit all applications for the quotations to the board for its final action and determination. It is unnecessary to quote at length the provisions of this remarkable contract in that behalf. Reduced to a simple proposition, the board is made the final arbiter and sole judge of the propriety of delivering these quotations to those desiring to use them. No remedy by appeal, no right of review, or any other redress for an arbitrary and unreasonable action of the board in this behalf is furnished by the contract. It acts secretly, and the applicant may never know the grounds upon which his application is rejected. The telegraph companies are strictly enjoined from furnishing these quotations against an adverse determination of the board.

So carefully has the board attempted to withdraw to itself the right of exclusive determination upon the subject that it undertakes to defend at its own expense all suits which may be brought against the telegraph companies to enforce delivery. In the case of independent traders, as for example, the appellants here, doing a very large and extended business throughout the country, could a more forceful weapon be placed in the hands of the board of trade to suppress them or to compel them to ally themselves with the board and submit to its exactions? It has used this very weapon against appellants. If this requirement can be upheld it is an end to independent trading. It can only be justified upon the theory that the board has an absolute and unqualified property in these quotations, and that they are not impressed with a public use. This theory, we have seen, is untenable. It must follow that the board cannot indirectly and by the subterfuge afforded through this power embodied in its contract withhold these quotations against its plain duty to allow publicity of them.

So unreasonable and unjust are the requirements by the board that its counsel has never yet, during the various stages of this litigation to the present time, attempted to

justify them as reasonable. The brunt of his argument was against the supposed case of one engaged in the unlawful business of bucket-shopping; but it is conceded here that the appellants are not engaged in that business, but, on the contrary, that their business is lawful and legitimate in every particular. Of necessity, therefore, counsel is driven to assert and does assert that the quotations are not impressed with a public trust; that the rule of equality is not binding upon the board, and that it has an absolute right to discriminate as to who shall receive the quotations totally without reference to the use that may be made of them. The argument may be summed up in the statement that inasmuch as the business is not impressed with a public use, but is a private business pure and simple, its right of property in the quotations is private; that it may refuse them to all, and inasmuch as it may refuse them to all, it may select invidiously or in anywise those who shall be the recipients of the service.

We challenge counsel for the appellee to show that this contract is not unreasonable, discriminative, and unfair as to the public at large, assuming that the quotations are impressed with a public use. We invite his fullest explanation of this contract to the court, and here prophesy that he will be unable to justify or uphold it under any theory or principle to be found in the books or inherently residing in the restrictions themselves.

IV.

The contract between the telegraph companies and the board of trade is violative of the act of Congress of July 2, 1890, chapter 647, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," otherwise known as the Sherman anti-trust act.

In dealing with the foregoing question we may be confronted with an objection that the particular defense was not pleaded in the answer. This is true. The assignments of error incorporate it, and it is also referred to in the printed brief which counsel for appellee filed with the court below and must have been presented there. This is a question, however, which is raised by the bill and contract and would be open for consideration in this court, even though not presented in the court below. It comes exactly within *Carter-Crume Co. v. Peurrung*, 30 C. C. A., 174; 86 Fed., 439. The cases are in all respects similar. We quote from the opinion of the court:

"But it is said that the contract in question is one in restraint of trade, and therefore void. This defense is here made for the first time. No suggestion as to its illegality is found in the pleadings; no reference thereto occurs in the charge, nor was any exception taken to any instruction given or refused. If it be true that this contract is one which, for reasons of public policy, is void, the defense in the court below would not be waived by a failure to properly plead." Citing *Coppell v. Hall*, 7 Wall., 542; *Oscanyan v. Arms Co.*, 103 U. S., 261, 268.

We think we have successfully shown that the contract between the telegraph companies and the board of trade is not a reasonable regulation of the use of these quotations by the public, but there inheres in this contract another

fatal vice. This suit has for its purpose the securing of the aid of the Federal courts in chancery in the enforcement of this contract, or, to put it in another form, if this contract was complied with according to its terms, there would be no occasion or justification for this suit. We have, we think, also sufficiently demonstrated that the ultimate effect as well as the original purpose of this contract was to create a monopoly in the Board of Trade of Chicago and related corporations. This purpose is in the present instance sought to be effectuated by the use of an instrumentality of interstate commerce, dealing with a subject of interstate commerce with reference to the performance of its public duties in that connection.

Two important inquiries stand at the threshold of this discussion. The first is whether the telegraph company is an instrument of interstate commerce and whether the business of telegraphing is commerce. Both of these questions are answered in two cases decided by the Supreme Court of the United States: *Pensacola Telegraph Company v. The Western Union Telegraph Company*, 96 U. S., 1, and *The Western Union Telegraph Company v. Texas*, 105 U. S., 460. See also the case of *Western Union Telegraph Company v. Pendleton*, 122 U. S., 347, 356.

The effect of these cases is stated in the case of *Telegraph Co. v. Texas*, 105 U. S., 464. The court says (speaking by Mr. Chief Justice Waite):

"A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their business is commerce itself. They do their transportation in different ways and their liabilities are in some respects different. But they are both indispensable to those engaged to any considerable extent in commercial pursuits."

There is, however, an underlying question here, and that is whether these market quotations are an "object," as the

old writers would say, or, in the modern verbiage, are a subject of commerce. If we had any doubt upon that subject, that doubt has been resolved by the appellee in the careful and studied allegations of his bill. He says (see page 5 of Record):

"And the knowledge of the prices thus made on said transactions during said market hours upon said exchange have become a species of property of such large value to your orator that telegraph companies are willing to pay your orator large sums of money for the privilege of receiving instantaneously said quotations *and selling the same to their customers.* And many persons throughout the United States who are engaged in the grain and provision business are willing to pay, *and for many years have paid said telegraph companies large sums of money therefor.*"

And thereupon follow the prices at which these quotations are sold and delivered to various persons in and out of Chicago and in and outside of the State of Illinois. It seems clear, then, that these quotations are a subject of commerce; that they are a subject of traffic in which the telegraph companies are engaged with the public and are selling to the public and are using this instrumentality of interstate commerce for the purpose of delivering them to their customers the same as a railroad would deliver a car of coal or any other commercial commodity. There, then, reside in the very nature and essence of these things and in the use that the public has been accustomed to make of them and their method of acquiring them all of the attributes of a subject or object of commerce.

This commerce is confessedly both State and interstate, but, so far as this bill is concerned, it is of necessity all interstate, because the service to be rendered by the telegraph company is initiated in Chicago and completed in Kansas City, Missouri, and in principle there is no difference between it and a train-load of fruit or vegetables shipped from California to Chicago or from Chicago to Kansas City.

But we are not without judicial definition of what constitutes interstate commerce, and a few quotations from the adjudicated cases will serve the convenience of the court in the apprehension of this question, and we here append them:

"As has frequently been said, interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities (*Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 196–203; *Kidd v. Pearson*, 128 U. S., 1, 20). If, therefore, an agreement or combination directly restrains not alone the manufacture, but the purchase, sale or exchange of the manufactured commodity among the several States, it is brought within the provisions of the statute."

Addyston Pipe & Steel Co. v. United States, 175 U. S., 241.

"'Commerce undoubtedly is traffic,' said Chief Justice Marshall, 'but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches and is regulated by prescribing rules for carrying on that intercourse.'"

Gibbons v. Ogden, 9 Wheat., 1, 189, 210.

"Commerce is intercourse; one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic when given in the most comprehensive terms, with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value."

Brown v. State of Maryland, 12 Wheat., 447.

"Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. To regulate it, as thus defined, there must be only one system of rules applicable alike to the whole country, which Congress alone can prescribe."

County of Mobile v. Kimball, 102 U. S., 691.

In *Bowman v. Chicago R. R. Co.*, 125 U. S., 490, the court said:

"What, then, is the assumption of the State court? Undoubtedly, in effect, that the State had the power to declare what should be an article of lawful commerce in the particular State; and having declared that ardent spirits and wines were deleterious to morals and health, they ceased to be commercial commodities there and that then the police power attached, and consequently the powers of Congress could not interfere. The exclusive State power is made to rest, not on the fact of the state or condition of the article, nor that it is property usually passing by sale from hand to hand, but on the declaration found in the State laws, and asserted as the State policy, that it shall be excluded from commerce. And by this means the sovereign jurisdiction in the State is attempted to be created in a case where it did not previously exist. If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation; for it takes from Congress, and leaves with the States, the power to determine the commodities, or articles of property, which are the subjects of lawful commerce."

In *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 203, 204, the court said:

"Transportation implies the taking up of persons or property at some point and putting them down at another. * * * The means of transportation of persons and freight between the States does not change the character of the business as one of commerce, nor does the time within which the distance between the States may be traversed."

See also—

Leisy v. Hardin, 135 U. S., 113.
The License cases, 5 How., 599.
In re Rahrer, 140 U. S., 557.

That the contract between the telegraph companies and the board of trade might be claimed to be obnoxious to the prohibitions of the Sherman anti-trust act seems to have occurred to counsel for appellee, because, in the brief that he filed in the

court below, he undertakes to answer such objection and to dismiss it summarily by the following statement, which we quote (p. 57):

"The Federal anti-trust act of July 2, 1890, has no application. It concerns only interstate commerce. These contracts are in no sense a part of that commerce. They were made in the State of Illinois and are in effect a purchase there of these quotations for a certain period of time by the telegraph companies from the board of trade. The contract provides for the delivery of the quotations by the board of trade to the telegraph companies in Chicago. They do not contemplate or require a transmission of the quotations to, or a sale thereof in, any other State. If sold in other States, they are, in the very nature of things, transmitted to those other States over the wires of the telegraph companies, and when they reach there, are still the property of the telegraph companies until sold by them to their customers there. The act of selling in the other States is not an act of interstate commerce. Certainly where one buys property in one State of a resident thereof, to be delivered there, such purchase does not fall within the domain of interstate commerce, because the purchaser may intend to, or may in fact, afterwards transport the property purchased to another State for sale by him there. Upon this question *Hopkins v. United States*, 171 U. S., 578, is conclusive."

We give counsel for appellant the benefit of his entire statement and argument upon this head. To be sure, his statement of this question is incorrect, not to say confused, and certainly inconclusive. He has not stated the facts as they appear upon the record and elsewhere admitted by himself. If the telegraph companies bought and received these quotations in Chicago, to be delivered elsewhere at the free will of the telegraph companies, without regulation or restriction, then it is true that the sale, so far as the board of trade is concerned, would not be an interstate sale. Neither would such a simple business transaction come within the condemnation of the Sherman act. This is too plain for argument, but it is obviously not this case.

The declaration of counsel, however, that the transmission by the telegraph companies of these quotations from Chicago to Kansas City and their sale there to the appellants would not be interstate commerce, is a misstatement of the law as it has been enunciated in the very case which he cites. In that case the court said:

"The selling of an article at its destination, which has been sent from another State, while it may be regarded as an interstate sale and one which the importer was entitled to make, yet the services of the individual employed at the place where the article is sold are not so connected with the subject sold as to make them a portion of interstate commerce." * * *

Hopkins v. United States, supra, 590.

On page 591 the court said:

"Granting that the cattle themselves, because coming from another State, are articles of interstate commerce, yet it does not therefore follow that before their sale all persons performing services in any way connected with them are themselves engaged in that commerce, or that their agreements among each other relative to the compensation to be charged for their services are void as agreements made in restraint of interstate trade."

This is all that the Hopkins case decides, and it will be observed that the decision is limited clearly and strictly within very narrow bounds. It relates to accessorial and incidental local services rendered with reference to the sale. But if we assume that the commission merchants referred to in the Hopkins case had also to do with the purchase and transportation of the cattle from points beyond the State where sold, or were the owners of the cattle, another and entirely different question would be presented. They would undoubtedly be prohibited by any combination to engage in a confederacy to regulate interstate commerce.

If the board of trade wants to bring itself within the rule of the Hopkins case it can only do so by ceasing to have any

control or dominion over these quotations after it delivers them to the telegraph companies. It is not content to do that. It follows them into other States and claims that by virtue of its contract with the telegraph companies it still possesses an interest in the quotations sufficient to secure from persons in other States the performance of conditions precedent to their reception and enjoyment.

A very excellent test as to whether these quotations are or are not commerce within the meaning of these adjudicated cases is to suppose that the State of Illinois should pass an act limiting the persons in other States who should receive these quotations, or, in other words, should substantially embody this contract in a legislative enactment. Would that, or would it not, be a regulation of interstate commerce?

This contract does not operate upon the board of trade, but wholly upon the telegraph companies in the exercise of a public duty, and, by way of consequence, upon the public which the telegraph companies are created to serve. The telegraph companies have paid a price for the privilege of disseminating these quotations and selling them, and in that respect have broadened their public function. But as an incident to the price paid and as part of the consideration they have entered into an agreement with the board of trade, whereby they bind themselves to sell these quotations and to deliver them, either within or without the State of Illinois, only to such members of the public as may be agreeable to the board of trade, for reasons peculiarly and selfishly its own. It must not be forgotten in this argument that the telegraph companies are not a mere instrumentality of sending these quotations to any one to whom the board of trade has sold them exclusively, but the telegraph companies have bought them and have limited and restricted their right to sell and dispose of the quotations by combining with the board of trade to that end.

The means of getting this property to any contemplated

purchaser is over the telegraph line. The person having this property in possession sells it to the telegraph company, with a proviso, however, that the telegraph company shall not sell and transport it (and the only means of making it available is by interstate transportation) to any but a favored few. Does not this restrain commerce in that commodity? Is not that the inevitable effect of such a contract? How forced and unnatural would be any construction upon this transaction that could lead to any other result. We have a right to assume the intention of the parties to such an agreement from its inescapable result.

We are dealing here with a combination and confederacy and assuming the existence of a property right in a commodity which is the subject of commerce. This property would be valueless to the public or to the board of trade were it not for the intervening instrumentality of the telegraph companies, and the telegraph companies cannot get any value except by making a connection with the board of trade. The board of trade offers the privilege of its floor to the telegraph companies for the procurement of this commodity to be sold and disseminated by it. The telegraph companies pay a fixed price for that privilege, but then and there they enter into a combination and agreement with the board of trade that in selling and disposing of it to the public and in giving the public the benefit of the use of this commodity, of which the board of trade has a monopoly, they will be governed in that respect by the regulations and directions of the board of trade as to the persons they will so serve. It is the *combination* and the *subject-matter* that bring this transaction within the terms of the statute.

It was for a long time contended that the provision of the act of Congress conferring rights of exclusive legislation was only operative upon the States and their subordinate bodies and that under the fifth amendment to the Constitution the free right of contract existed in favor of private persons and corporations, although the effect of such contracts was to re-

strict or regulate commerce between the States. That this limitation did not exist, and that the Federal court had equal cognizance of contracts between individuals as of statutes, ordinances, and judicial regulations, was noticed by Justice Brewer in the Debs case. We quote from the decision (158 U. S. Rep., p. 581), as follows:

"It is curious to note the fact, that in a large proportion of the cases in respect to interstate commerce brought to this court, the question presented was of the validity of State legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce. If a State, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?"

But the question was forever set at rest in the case of *The Addyston Pipe and Steel Company v. United States*, 175 U. S., 211. Of course, this case is entirely familiar to the court, and we can only invite its full consideration and a comparison of the facts in that case and this and the contract there with the contract here. There it was a combination among certain pipe manufacturers for the purpose of regulating the output of their factories and the prices which they should receive throughout a portion of the United States. Here it is a combination between a telegraph company, an instrument of interstate commerce, and the board of trade, each of which is directly interested in the subject-matter of the contract, namely, the quotations arising upon the board. The subject of the agreement is the sale and distribution of such quotations throughout the United States. In both cases the essential objects to be attained require a combination involving a regulation and restriction of commerce with reference to the subject-matter of the contract. Moreover, another point of similarity between the cases is that commerce is not

restrained or affected incidentally, but as a necessary and proximate and intended result of the combination. The combination is brought into life for no other purpose than to restrain commerce. The only thing which could have animated the board of trade and the telegraph companies in entering into this contract was the regulation of the sale and distribution of these quotations. The whole subject-matter of the contract relates to such sale. Eliminate the purpose of sale from their contract, and it makes it a thing for the waste-paper basket only. It is in this essential particular that the case differs, for example, from the rule announced in *United States v. Knight*, 156 U. S., p. 1. There the influence upon commerce of the arrangement between the sugar refiners was held by the Supreme Court to be not the evident and obvious purpose of the agreement, but, if at all, to be a mere incident flowing from a legitimate and proper arrangement among manufacturers.

The mere fact of regulation, whether reasonable or unreasonable, brings the case within the statute.

It makes no difference under this aspect of the case whether the regulation and restriction put upon the telegraph companies by virtue of this combination is reasonable to the public to be served, or to the parties to the contract, or not. The gravamen of the offending feature of the contract is that it regulates and restrains. In this respect the courts have no office to perform but to declare such combinations and agreements to be void. In the most recent of the cases upon this point all of the authorities are collated and discussed by the circuit court of appeals of the sixth circuit in the case of *Chesapeake & Ohio Fuel Co. v. United States*, 115 Fed., 610, the decision being by Judge Day. To emphasize this particular point, we quote briefly from the opinion (p. 619):

"Is the contract in restraint of trade, within the meaning of the law? As we understand the decisions of the Supreme

Court of the United States, the construction of the statute is no longer an open question. At the common law contracts were invalid when in unreasonable restraint of trade, and were not enforced by the courts. (See opinion of this court per Taft, circuit judge, in *U. S. v. Addyston Pipe & Steel Co.*, 29 C. C. A., 141; 85 Fed., 271–279; 46 L. R. A., 122.) By the Constitution of the United States Congress is given plenary power to regulate commerce between the States and with foreign nations. In the exercise of this power Congress may prevent interference by the States with the freedom of interstate commerce, and may likewise prohibit individuals, by contract or otherwise, from impeding the free and untrammeled flow of such trade. In the exercise of this right Congress has seen fit to prohibit all contracts in restraint of trade. It has not left to the courts the consideration of the question whether such restraint is reasonable or unreasonable, or whether the contract would have been illegal at the common law or not. The act leaves for consideration by judicial authority no question of this character, but all contracts and combinations are declared illegal if in restraint of trade or commerce among the States (*U. S. v. Trans-Missouri Freight Ass'n*, 166 U. S., 290; 17 Sup. Ct., 540; 41 L. Ed., 1007; *U. S. v. Joint Traffic Ass'n*, 171 U. S., 505; 19 Sup. Ct., 25; 43 L. Ed., 259; *Addyston Pipe & Steel Co. v. U. S.*, 175 U. S., 211; 20 Sup. Ct., 96; 44 L. Ed., 136)."

If the contract between the board of trade and telegraph companies is illegal, a court of equity will not lend its aid to its enforcement.

If this contract is one which regulates interstate commerce, and is therefore forbidden by the statute, no right can be asserted in this or any other court to the maintenance of its terms and the enforcement of its obligations upon any individual. It comes within the very ancient maxim of the law, *ex dolo malo non oritur actio*. There could not be a specific enforcement between the parties to the agreement in any court, and *a fortiori* it cannot be enforced against any third party. In the case presented the contract need not be against public morals, but it is a contract prohibited by stat-

ute, and any violation of the express terms of the statute subjects, in a proper proceeding, the parties to the contract to a penal action. The law is well settled that no court will lend its aid to further, much less to enforce, the terms of such a contract.

In *McMullen v. Hoffman*, 174 U. S., 639, 654, which involved a contract restraining competition in bidding for public work, the court said, in review of many of the authorities:

"The authorities, from the earliest time to the present, unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract. In cases of this kind the maxim is *Potior est conditio defendentis*."

In *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540, 548, the court declares it to be undoubtedly "the general rule that a contract made in violation of a statute is void, and no recovery can be had upon it; as in *Embrey v. Johnson*, 131 U. S., 336, 348." But it needs no citation of authority to establish so obvious a rule.

V.

This contract is finally void as being violative of section 8, article 1, of the Constitution of the United States, relating to interstate commerce.

We have shown that the contract in question is violative of the Sherman anti-trust act, so called, as involving an unlawful combination in restraint of interstate commerce. We are also constrained to put upon our belief that it is also void as being violative of the constitutional provision which forbids the regulation of interstate commerce by any power save

that of Congress. The language used in the Addyston Pipe case, above cited, limiting judicial power over contracts to reprobation or prevention of such as violate the Sherman anti-trust act, is applicable to the facts in that case; but this case is distinguishable from that case in an important particular: That was a contract between individuals relating to their private business and its management. This case involves a control, domination, regulation, and restraint of an instrument of interstate commerce. It is a matter of public history of which this court is bound to take notice, because the fact is embodied in decisions of the Federal courts, that the Western Union Telegraph Company has complied with the provisions of the act of Congress of 1866, which confers upon it the right to use and occupy the public domain of the United States and the post-roads of the United States for the uses and purposes of its telegraph, and to take timber and stone from public lands, and otherwise is given rights tantamount to the rights conferred upon corporations exercising the power of eminent domain. (See *Teleg. Co. v. Texas*, 105 U. S., 460.) Outside of this act and under the laws of the various States of the Union, the telegraph companies in addition have the power of eminent domain and are to the same extent as railroads quasi-public corporations. The cases of railroads and telegraphs are parallel in so far as their obligations to the public are concerned, and the same rights, immunities, and privileges are given to each.

A contract whereby the duties and obligations of such instrumentality to the public are restricted, governed, and directed is obviously a different contract than one between individuals. Here, by operating upon the instrumentality itself, the operation is as direct and absolute as if it were, by force of a State law, made to accomplish such regulation.

In the Debs case the question turned upon the very fact here adverted to, that the operation of Debs' conduct was upon an instrumentality of interstate commerce, and regulated, restrained, and obstructed it, and in this connection

we feel it not redundant to again quote part of the language of Mr. Justice Brewer as applicable to this particular contention:

"If a State, with its recognized power of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has the power which the State itself does not possess?"

Congress has aided and established these telegraph lines as instruments of its own, has given them extraordinary powers and privileges, and has in the most signal and conspicuous way put upon them the seal of a public agency. Can such public agent, therefore, be by contract subjected to the rule and dominion of an individual or a private corporation? The statement of this proposition, it seems to us, carries with it its complete answer. *In re Debs* the court ruled the case upon the broader principle that any obstruction of commerce by operating upon its instrument was violative of and an infringement upon the exclusive jurisdiction of Congress in that behalf.

We therefore contend that upon this broader doctrine the contract can obtain no judicial support and countenance.

Finally, upon all the foregoing considerations of law and fact, we submit this case and ask that this court shall vacate the order of the trial judge and direct that a decree be entered in the court below dismissing appellee's bill.

All of which is respectfully submitted.

W. H. Rossington,
Chas. Blood Smith,
Clifford Histed,
Solicitors and of Counsel for Appellants.

APR 26 1905
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1904.

THE L. A. KINSEY COMPANY, *et al.*,
Petitioners,
against
BOARD OF TRADE OF THE CITY OF CHICAGO,
Respondent.

No. 280.
On Certiorari to the Circuit Court of Appeals for the Seventh Circuit.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Petitioner,
against
CHRISTIE GRAIN AND STOCK COMPANY, *et al.*,
Respondents.

No. 224.
Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

Brief submitted by leave of Court, in behalf of Edwin Hawley and Frank B. Ray solely on the nature of a Wagering Contract.

JULIEN T. DAVIES,
ABRAM I. ELKUS,
GARRARD GLENN,
Of Counsel for Edwin Hawley and Frank B. Ray.

In the Supreme Court of the United States.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Petitioner,

against

CHRISTIE GRAIN AND STOCK COMPANY, *et al.*,
Respondents.
(Two cases.)

OCTOBER TERM, 1904.
Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

L. A. KINSEY COMPANY, *et al.*,
Petitioners,

against

BOARD OF TRADE OF THE CITY OF CHICAGO,
Respondent.

OCTOBER TERM, 1904.
Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Brief filed by permission of the Court on behalf of Edwin Hawley and Frank H. Ray upon the question as to what constitutes a Wagering Contract.

Upon the records in the cases at bar the question arises as to what constitutes a wagering contract. Upon this single point we desire to submit an argument.

Statement of Facts.

The contracts in question are those made for the supposed purchase of various commodities upon the floor of the Chicago Board of Trade. These are in form contracts

for sale and delivery but were found by the Court below to be transactions in which actual transfers of a commodity were not contemplated, and, in fact, wagers upon the daily rise or fall of prices.

We desire to discuss briefly the nature of these transactions, the method of determining what they really are, and the question of their legality.

POINTS.

I.

The nature of these contracts.

The transactions under consideration must be distinguished from transactions upon the London Stock Exchange, the New York Stock Exchange or the Chicago Stock Exchange, where performance by the parties is actually contemplated and where deliveries are, by the rules of the Exchange, required to be made either daily or upon fixed settling days, and where in the event of default the defaulting party is sold under the rule.

In the Christie case (125 Fed. Rep., 161), the facts as stated in the opinion of MR. JUSTICE SHIRAS, at page 167, writing for the Circuit Court of Appeals, Eighth Circuit, were:

> "Of the nature of the business carried on by the members of the Board of Trade there can be no question under the evidence submitted in this case. The testimony of the president of the board, William S. Warren, and of a large number of the members of the board was taken for the purpose of showing the character of the transactions had upon the floor of the exchange hall; and there is absolute unanimity in their evidence to the effect that much the larger part of these

transactions were deals wherein it was not expected or understood that there would be any delivery of the article nominally dealt in, but the same were carried through and settled by methods clearly devised to avoid the need of actual delivery. The estimates of the witnesses vary as to the percentage of the transactions in which actual delivery was contemplated or had, running from 1 to 15 per cent., thus proving that at least 85 per cent. and more, probably 95 per cent., of the transactions would come under the condemnation of the Illinois statute. We do not deem it necessary to set forth the details of this testimony, which can be found in the opinion of Judge Thompson in the case of The Board of Trade of the City of Chicago *v.* O'Dell Commission Co. (C. C.), 115 Fed., 574. In that case, and in Board of Trade *v.* Donovan Commission Co. (C. C.), 121 Fed.. 1012, upon consideration of substantially the same evidence submitted in this case, the conclusion was reached that over 90 per cent. of the transactions had on the floor of the exchange hall maintained by the Chicago Board of Trade were purely gambling transactions."

In the Kinsey case (130 Fed. Rep., 507), at page 509, in findings of the Master below, the following occurs:

"It does appear, however, that the volume of such business is enormous; one firm conducted transactions in wheat daily aggregating 1,500,000 to 2,000,000 bushels, and in corn 1,000,000 bushels daily; another firm's transactions in wheat daily amounted to 6,000,000 bushels; a third firm's transactions in wheat daily amounted to 4,000,000 bushels; a fourth firm's transactions amounted to 1,000,000 bushels daily; a fifth firm's transactions in all grain amounted to 1,800,000 bushels daily; and a sixth firm's transactions in all grains amounted to 2,000,000 bushels daily. While it is true that the business of these six firms in the pits is much larger than the business of any other six firms conducting transactions in the pits, and that it would not be proper to say that the average business is a proper average of each of the persons conducting transactions in the pits, it is nevertheless true that it is fairly deducible from the evidence that the aggregate business transactions in grain was largely in excess of the total wheat and corn production of the entire United States during either of the years 1900 and 1901, and was many times over the entire receipts in Chicago of grain during each of said two years of 1900 and 1901, and of such receipts in Chicago, less than 20 per cent. inspected up to grades of

grain which could be delivered upon time contracts made by said sales and purchases in the pits. It is also true that a decrease in the total grain productions of the United States does not cause a proportionate decrease in the volume of business done in the 'pits' of the complainant association, but, on the contrary, such business is larger during a year in which there is a shortage in the grain crop."

The real nature of these contracts appears when the circumstances under which they are made are given due weight. The parties to these contracts are members of an exchange which has for one of its objects the dissemination among its members of all information obtainable concerning the annual crops and the amount of trading in the various grains. These persons know that the average daily transactions on their exchange are larger than the whole amount of available wheat and grain in the United States. They know that it is a physical impossibility to carry out, according to their terms, the contracts made by them. They also know, from experience and the methods of the exchange, that the contracts made upon the exchange not only cannot but will not be consummated by delivery. Knowing these things, these persons agree that on a certain day in the future one will take from the other and pay for at a fixed price a certain quantity of a given commodity. If these were *bona fide* contracts, each party to them would remain a party to the end; or, if he assigned his contract to another, would give the other party notice of such assignment and obtain his consent thereto in order to effect a novation. The purchaser would arrange for money to meet his contract obligation. The seller would endeavor to procure from the producer the article which he has sold and to arrange for its transportation in order that due delivery could be made. Quite

different is it with these members of the Chicago Board of Trade. No pretense is made of retaining the contract in its integrity. No steps are taken looking towards actual delivery. Instead, at the close of each day, through the system of ringing, all contracts made upon that day between the members of the exchange are shifted and switched around in such a way that parties are juggled from one contract to another and from a contract with one party to a contract with another in an amazing fashion, with the result that, at the close of the process, each broker finds himself a party to a different contract, perhaps with a different party, and the original contract has vanished, he does not know where.

At eleven in the morning on the Exchange A contracts to deliver to B five thousand bushels of corn. At the close of the day after the contracts have been "rung" it may be that A will emerge from the process as vendee to C and his contract with B will be gone.

As appears by the Master's report in the Kinsey case, at least three-quarters of the total transactions in the pits are adjusted by the direct and the ring method. The direct method is a simpler form than the ring method and it is described by the Master in the Kinsey case (130 Fed. Rep., 509,p. 510) as follows:

> "Most time contracts made in the 'pits' are adjusted as between members of the complainant association before the specified time of delivery arrives, by either the first or the second of the above-named methods. Direct settlements are effected by offsetting similar contracts at the close of the business hours of each day in the following manner: As soon as is practicable after the close of business in the pits, each broker (individual, firm or corporation) conducting business in the pits, takes from the day's transactions on his books the contracts similar as to amount and time of delivery to counter contracts made

with other members of the complainant association, and ascertains therefrom the difference of the aggregate prices of such similar contracts, and if the difference be in his favor, the amount of such difference is charged to the other party in such counter contracts; and, if the difference is against him, such difference is credited to the other party to such counter contract. The following is a simple illustration: If, during the day, broker A has sold to broker B 5,000 bushels of December wheat at 75 cents per bushel, and broker B has sold to broker A 5,000 bushels of December wheat at 76 cents per bushel, after offsetting the contracts at 75 cents per bushel, there is a difference in B's favor of one cent on each bushel, or $50. This offsetting difference in cash is placed as a debit or credit, as the case may be, upon the clearing house sheet, hereinafter described, of the respective brokers, parties to said counter or offsetting contracts."

The standard by which these contracts are settled is the so-called market price, of which the courts hear so much when an attempt is made to show the real nature of these transactions. This market price is purely artificial. It is a market price only in name and it is not secured by taking the actual sales for the day from the trade journals. The actual producer has nothing to do with fixing it, it is nothing more or less than the prevailing quotation from the daily betting ring. The standard is fixed by the trend of like gambling contracts made during the day under the roof of the same gambling house. The standard rises and falls as the majority of the bettors place their wagers on higher or lower prices for the commodity. Each betting transaction must be settled upon the quotations created by the total number of like transactions. Each dealer wins or loses according to his accuracy in gauging the day's prices. At the end of the day each transaction loses its contractual features, the obligations for future delivery of a fixed quantity of a commodity at a fixed price vanish, and are replaced by a debit or credit

cash item. The so-called contracts thus appear to be mere subterfuges for a daily transfer of money between the members of the exchange and their principals according to the movements of prices in the different commodities. The dealings are not in commodities but in differences.

II.

Principles applying to these transactions.

We have already pointed out that in all Stock Exchange transactions actual delivery of the stock sold always takes place, being required by the rules of those exchanges. No settlement of differences in market prices is had. In view of this the decision of this Court in *Clews* vs. *Jamieson* (182 U. S., 461), has no bearing upon the cases at bar.

In that case a bill in equity was filed against the governors of the Chicago Stock Exchange and others to recover certain margins put up by the plaintiff, secured on the sale of stock "for the account." The plaintiff's broker, one Schwartz, sold for the account to the defendant Jamieson. Schwartz failed, and the plaintiff got the stock and tendered it to the defendant Jamieson, who defaulted. Whereupon, the plaintiff, after notice to Jamieson, sold the stock to the highest bidder. The Court held that this contract was not a wagering agreement.

MR. JUSTICE PECKHAM, said at page 492:

"To say that such rules afford strong ground to infer an understanding between the parties doing business subject to them—that their con-

tract was not one of actual sale but merely one to speculate upon differences—is, in our opinion, to presume an illegal contract against its plain terms, and without any sound basis for the presumption. Thus, if an individual agreeing to purchase and pay for certain stock at a future date fails or refuses to perform his contract, the stock is sold under the rule, the price received and the difference between the price at which it sold and the contract price he is held answerable for."

In this case, however, MR. JUSTICE HARLAN dissented in the following language:

"I dissent ftom the opinion and judgment in this case upon the ground * * * that the transactions involved in this litigation constituted gambling indifferences."

It has been held in so many jurisdictions that it is, as this Court has said, the American, as distinct from the English rule, that contracts to be performed only by the payment of differences, are void at common law in the absence of statute.

Irwin vs. *Williar*, 110 U. S., 499.
Ball vs. *Davis*, 1 N. Y. St. Rep., 517.
Flagg vs. *Gilpin*, 17 R. I., 10.
Rumsey vs. *Berry*, 65 Me., 575.
Gregory vs. *Wendell*, 39 Mich., 337.
Mohr vs. *Meisen*, 47 Minn., 228.
Brua's Appeal, 55 Pa. St., 294.

As this Court said, in *Irwin* vs. *Williar*, 110 U. S., 499:

"In England it is held that the contracts, although wagers, were not void at common law, and that the statute has not made them illegal, but only non-enforceable, while generally, in this country, all wagering contracts are held to be illegal and void as against public policy."

In *Flagg* vs. *Gilpin* (17 R. I., 10), the Court said:

"No case has been cited and we have seen no case in the reports of any of the states which holds that the contract has any validity.

This particular kind of gambling has been repeatedly denounced by the American courts as one which it is the policy of the law particularly to guard against, and the practice of dealing in differences has been denounced in the severest terms by these courts.

Cunningham vs. *Bank of Augusta*, 71 Ga., 400.

Brua's Appeal, 55 Pa. St., 294.

Cothran vs. *Ellis*, 125 Ill., 496.

Rudolph vs. *Winters*, 7 Neb., 126.

In *Cothran* vs. *Ellis* (125 Ill., 496), the Court described this practice as the "national sin."

In *Cunningham* vs. *Bank of Augusta* (71 Ga., 400), BLANDFORD, *J.*, said:

"A betting on a game of faro, brag, or poker, cannot be more hazardous, dangerous or uncertain. Indeed, it may be said that these animals are tame, gentle and submissive, compared to this monster. The law has caged them and driven them to their dens; they have been outlawed, while this ferocious beast has been allowed to stalk about in open mid-day, with gilded signs and flaming advertisements, to lure the unhappy victim to its embrace of death and destruction. What are some of the consequences of these speculations on 'futures?' The faithful chroniclers of the day have informed us, as growing directly out of these nefarious practices, that there have been bankruptcies, defalcations of public officers, embezzlements, forgeries, larcenies, and death. Certainly no one will contend for one moment, that a transaction fraught with such evil consequences is not immoral, illegal, and contrary to public policy."

In *Brua's Appeal* (55 Pa. St., 294), the Court said:

"Anything which induces men to risk their money or property without any other hope of return than to get for nothing any given amount from another, is gambling, and demoralizing to the community, no matter by what name it may be called. * * *

All gambling is immoral. I apprehend that the losses incident to the practice disclosed in this very case, within the past five years, have

contributed more to the failures and embezzlements by public officers, clerks, agents and others acting in fiduciary relations, public and private, than any other known, or perhaps, all other causes; and the worst of it is, that in the train of its evils, there is a vast amount of misery and suffering by persons entirely guiltless of any participation in the cause of it."

A well-established principle has resulted from the decisions upon this question, which all the authorities support, viz.:

A contract which in form is for the purpose of the sale of a commodity, is void as a wagering agreement if at the time of the making it neither party intends to accept or to deliver the commodities called for, but to adjust their relative rights at or before the maturity of the contract by the payment by one party to the other, as the case may be, of the difference between the contract price and a price as created by some outside standard, whether that be the prevailing market price or otherwise.

The principle is applied according to the following rules:

1. *The* FORM *of the contract is unimportant.* The *actual intent* of the parties at the time of the making of the contract is the absolute test.

2. *This intent may be proven by the circumstances surrounding the transaction, and proof of such circumstances is received with great liberality.*

We will first discuss Rule 1, which is founded on the following leading cases:

Irwin vs. *Williar*, 110 U. S., 499.
Higgins vs. *McCrea*, 116 U. S., 671.
Embrey vs. *Jemison*, 131 U. S., 336.
Pierce vs. *Rice*, 142 U. S., 28.
Story vs. *Salomon*, 71 N. Y., 420.

Peck vs. *Doran–Wright Co.*, 57 Hun, 343.
Kenyon vs. *Luther*, 4 N. Y. Supp., 498.
Cover vs. *Smith*, 82 Md., 586.
Lester vs. *Buel*, 49 Ohio St., 240.
Rumsey vs. *Berry*, 65 Me., 570.
Gregory vs. *Wendell*, 39 Mich., 337.
Flagg vs. *Baldwin*, 38 N. J. Eq., 219.
Sharp vs. *Stalker*, 63 N. J. Eq., 596.

In *Embrey* vs. *Jemison* (131 U. S., 336), and action was brought on notes executed by the defendant to the firm of Moody & Jemison, members of the New York Cotton Exchange. The defendant filed a special plea of wager, averring that he contracted with the plaintiff to purchase for him on margins not actual cotton but 4,000 bales of future delivery cotton for May delivery, called "futures"; that thereafter the price fluctuated, and the plaintiff called on the defendant for more margin, which the defendant informed the plaintiff he was not able to pay; that thereafter the plaintiff called on him to make good the resulting loss, and the defendant executed the notes in suit. A demurrer to this plea was sustained and defendant brought error. This Court reversed the judgment, and speaking through Mr. Justice Harlan, said:

> "The plea makes a case of money advanced by the plaintiff's firm solely for the purpose of carrying 'cotton futures,' for which he, or they, contracted, when, according to the averments of the rejected plea, neither party contemplated the purchase or delivery in fact of cotton, and when it was understood that any settlement in respect to such purchase should be exclusively upon the basis of one party paying to the other only 'the difference between the contract price and the market price in said cotton futures according to the fluctuations in the market.' If this was not a wagering contract under the guise of a contract of sale, it would be diffi-

cult to imagine one that would be of that character. The mere form of the transaction is of little consequence. If it were, the statute against wagers could easily be avoided. The essential inquiry in every case is as to the necessary effect of the contract, and the real intention of the parties."

Irwin vs. *Williar* (110 U. S., 499) was an action by brokers against their customer for losses sustained on the short sale of wheat futures. There was a verdict for the plaintiff, and the defendant brought error. This Court held that the instructions of the learned Circuit Judge to the jury were correct and the defendant was not prejudiced thereby. These instructions, in substance, embraced the following points:

(1) A contract of sale is invalidated if both parties understand the transaction as really being one merely for its settlement by the payment of differences.

(2) The fact that a bet or wager is made to assume the form of a contract does not preclude either party from showing the real nature of the transaction.

In *Higgins* vs. *McCrea* (116 U. S., 671) an action was brought by brokers against their customer for losses on the purchase of lard and pork futures under the rules of the Chicago Board of Trade (the same Exchange involved in these appeals), and made on the floor of the Exchange. The defendant counterclaimed for money advanced to the plaintiff for illegal purposes, to wit, for gambling transactions, averring that the parties never intended actually to receive the commodity which they contracted to buy. It appeared from the evidence that the contract with the defendant had been "rung up" exactly as appears on the record in the present cases. The court held that the

plaintiff could not recover because this contract had been "rung," and there had been substituted as s party to it a stranger to the defendant with whom the defendant could not be brought into privity except with his consent. It was also held that the defendant could not recover on his counterclaim because the state statute (of Ohio) did not provide for an action to recover back money paid out for gambling purposes and in the absence of statute the parties were in *pari delicto*.

In *Pierce* vs. *Rice* (142 U. S., 28), this Court held that a note given by a customer to a broker to cover losses on the purchase of wheat futures was void. Mr. JUSTICE HARLAN, at page 41, said:

> "In respect to the character of the transactions resulting in the claim of Hooker & Co. against Foote for $22,165.72, which the latter settled by a transfer of the four Couch notes, with guaranty of their payment, but little need be said. What the evidence was upon this point in Jackson, Receiver, *vs.* Foote, we are not informed otherwise than by the decision of the court in that case. But the evidence before us is overwhelming to the effect that the real object of the arrangement between Hooker & Co. and Foote was, not to contract for the actual delivery, in the future, of grain or other commodities—which contracts would not have been illegal—but merely to speculate upon the rise and fall in prices, with an explicit understanding, from the outset, that the property apparently contracted for was not to be delivered, and that the transactions were to be closed only by the payment of the differences between the contract price and the market price at the time fixed for the execution of the contract. There was no material part of the claim of Hooker & Co. that was not based upon a palpable violation of the statute. The parties deliberately engaged in what is called gambling in differences. It results that both the transfer and guaranty of the Couch notes to Hooker & Co. were void under the statute, and passed no title to them or to their assignee."

Nor has there been any later declaration by this Court which is at variance with the views expressed in the preceding cases.

Bibb vs. *Allen* (149 U. S., 481) was a simple case of failure of proof on the part of him who alleged that the contract was a wagering contract. In that case an action was brought by a member of the New York Cotton Exchange against a customer for commissions and disbursements in the sales of cotton futures under the rules of the New York Cotton Exchange. This Court held for the plaintiff for the following reasons, as expressed on pages 490–2:

> "But the facts in this case do not bring the transaction in question within the operation of that principle, for the evidence set out in the bill of exceptions fails to show that either party to the transactions intended the same as wagering or gambling speculations. On the contrary, the undisputed testimony establishes that the sales were not wagers, but that the cotton was to be actually delivered at the time agreed upon. Bibb's own statement of the transactions does not disclose the fact that they were intended even on his part as gambling or wagering speculations. He certainly never disclosed to the plaintiffs as his brokers, through correspondence or verbal communications, that he did not intend to deliver the cotton sold through them for future delivery."

Speaking of the charge of the Circuit Judge, which was approved in Irwin *vs.* Williar (110 U. S., 499), this Court said:

> "This court approved that charge as a correct statement of the law upon the subject of what constitutes a wagering contract. It is directly in point herein that the evidence fails to show not only that Bibb & Co. had intended it as a wagering contract, but it fails to show also that the plaintiffs so understood it. The testimony establishes that the plaintiffs did not in fact so understand it."

In Sharpe *vs.* Stalker, 63 N. J. Eq., 596, where it was held that a similar contract was a wagering transaction, STEVENS, *V. C.*, said:

> "Our court of last resort holds that the ostensible agreement of the parties, even when reduced to writing, is not necessarily controlling, because it may be a mere cover. Hence it follows that, in cases of this character, the acts and correspondence of the parties are of more importance than their formal declarations. If from these acts and that correspondence it is seen that the transaction is, in reality, a dealing in differences, then the name or color given to it is of no consequence."

We will now discuss Rule 2 as to the probative value of the surrounding circumstances and the liberality with which they are received.

The following authorities express this rule:

Kenyon vs. *Luther*, 4 N. Y. Supp., 498.
Ball vs. *Davis*, 1 N. Y. St. Rep., 517.
Dwight vs. *Badgely*, 60 Hun, 144.
Peck vs. *Doran-Wright Co.*, 57 Hun, 343.
Yerkes vs. *Salomon*, 11 Hun, 471.
Mackey vs. *Rausch*, 39 N. Y. St. Rep. 232.
In re Green, 7 Bissell, 338; Fed. Cas. 5751.
Cobb vs. *Prell*, 15 Fed., 774.
In re Chandler, Fed. Cas. 2590; 9 N. B. R., 514.
Mohr vs. *Meisen*, 47 Minn., 228.
Kirkpatrick vs. *Bonsall*, 57 Pa. St., 155.
Lowrey vs. *Dillmann*, 59 Wis., 197.
Carroll vs. *Holmes*, 24 Ill. App., 453.
Hill vs. *Johnson*, 38 Mo. App., 383.
Croner vs. *Spencer*, 92 Mo., 499.
Cothran vs. *Ellis*, 125 Ill., 496.

These cases all hold that evidence may be received by the Court: (1) that in previous transactions between the parties deliveries had never been made; (2) that either of the parties was not financially able to carry out the contract according to its terms; (3) that by reason of a large number of similar contracts, one or other of the parties would not be able to carry them all out according to their terms; (4) the unfamiliarity of either of the parties with the conditions and circumstances governing the legitimate trade conducted in the commodities which were the subject matter of the contract; (5) if any one or more of these elements exist, the fact that the intention of one or both of the parties was not expressed is immaterial.

In *Dwight* vs. *Badgely* (60 Hun, 144), DANIELS, *J.*, said:

> "In this class of cases, all pertinent evidence should be received to discover the true nature of the transactions. The design generally is to avoid exposure and evade the law, and that should be prevented when it can be done by receiving in evidence all pertinent answers having the effect of disclosing the true nature of the transactions."

In *Mohr* vs. *Meisen* (47 Minn., 228), the Court said:

> "The understanding between the parties may be gathered from the facts and attending circumstances. This is well settled, and upon this point evidence of the defendant's occupation, residence, financial ability; that he never delivered or received or proposed to deliver or receive any grain; that he was not a dealer; and that the orders to purchase were made without reference to or far in excess of his ability to pay for, with other facts of like character, was competent."

And even where the rules of an exchange, of which one of the parties to the contract was a member and of which both parties had notice, provided that all contracts made thereunder should contemplate the actual delivery of the commodity under various pains and penalties, yet if it

was the real understanding of the parties to the contract that delivery should not be made the contract was void.

Mackey vs. *Rausch*, 39 N. Y. St. Rep., 233.
Embrey vs. *Jemison*, 131 U. S., 336.

A very interesting case is that of *In re Chandler* (9 N. B. R., 514, Federal Case No. 2590). The bankrupt Chandler engaged in a campaign to corner the oat market, buying oats for future delivery in huge quantities and selling "puts" for June in large amounts. He was adjudicated a bankrupt, and the holders of the puts attempted to prove their claims for the difference between the price fixed in advance and the market price. The total amount of claims was $400,000, and the whole amount which the bankrupt had received for the puts was less than $19,000. His assignee moved to expunge these claims, and BLODGETT, *J.*, granted the motion, saying:

> "The parties when they made them (the contracts) did not intend to deliver the grain but only at the utmost to settle the differences. They knew that they could not obtain the grain to deliver if Chandler sustained his corner, and their action in buying a put was virtually a bet on their part that he could not accomplish what they all knew he was endeavoring to do, that is, to keep up a price through June to his own figures, and virtually a bet on his part that he could do so."

One of the leading cases on this subject is that of *Flagg* vs. *Baldwin* (38 N. J. Eq., 219). There a contract between a broker and his client with regard to purchasing stock for the benefit of the latter on margins was held void as a gaming transaction, and the Court of Errors and Appeals, speaking through MAGIE, *J.* (speaking of circumstances going to show the wagering nature of these transactions), said:

> "These enormous transactions were far beyond the ability of appel-

lants at any time, and were known to be so. * * * Under such circumstances, it is idle to pretend that there was or could be any hope or expectation that appellants were to take or could be required to take these vast amounts of stock. For respondent to have tendered them, and demanded payment for them, would have been absurd in the extreme. The whole circumstances show that no such right to tender entered into the transaction. On the contrary, the contract plainly was that if the stocks bought advanced, the profit was to be realized by a sale. If they declined, the remedy of respondent to save himself was by a sale. The settlement was to be of the profits and losses thus ascertained."

In Sharpe *vs.* Stalker (63 N. J. Eq., 596), speaking of the fact that through a long course of dealing between the parties, only once had the broker actually delivered to his customer the stock, the customer paying therefor in full, the Vice-Chancellor said:

"Now, if it were proved that, on one occasion out of a multitude of instances covering a long period of time, the customer had received from the broker a single certificate of stock, which he had actually paid for, it would seem to me that this proved, not that all the other transactions were not dealings in differences, but that, on this one occasion, the broker and his customer had deviated from their usual course of dealing, and had taken another course."

And again (p. 601):

"If the purchases and sales are very numerous and they have occurred through a long period of time, and all, with a single exception, point in one direction, it seems to me that the only reasonable inference that can be made is that the parties have been dealing in differences; and that they intended to deal in differences, except in the one case in which they, for some special reason, agreed otherwise."

In *Kirkpatrick* vs. *Bonsall* (72 Pa. St., 155), AGNEW, *J.*, said (p. 159):

"The defendants had shown by the plaintiff's own testimony that he was not a refiner of oil, or one who would buy for his own consumption; that he had not sold the oil when he made use of his call or option, and, therefore, had no contract of his own to fulfil; and also that he did

not intend to call for the oil if the market price had gone below the price fixed in the agreement. What intent would reasonably be inferred from these circumstances? Certainly the belief induced that there was not an intent to bargin for oil for a real business purpose. Now, if, besides this contract, it could be shown that many others of a similar kind were entered into by the same man, at and about the same time, certainly it would strenghten the conviction that the plaintiff was not a *bona fide* contractor in a legitimate business ; and if we then add to this the fact that he was financially unable to take and pay for the total amount of oil he had contracted for, that conviction would become more firm, and that the real nature of his contracts was a wager on the rise and fall of the price of oil."

It is apparent from the foregoing authorities that the law with regard to wagering contracts is well settled and that the only difficulty in cases of this character lies in applying the fixed principles to the individual cases.

III.

Application of these principles to the cases before the Court.

Upon the vital point of intention there can be but little doubt here. Ordinarily the question comes up between the two parties who have had transactions in some commodity, and the course of their prior dealings has to be shown, in order to determine what they really were contracting to do. In these cases at bar the question arises not between two such individuals but upon the sum of all the transactions made by all persons on the Chicago Board of Trade. That these were dealings in differences and not in commodities is proven, first, by the rules and customs of the Exchange, by which each night the contracts undergo a complete metamorphosis and become either

contracts with different people or a cash debit or credit, and, secondly, by all the surrounding circumstances; the physicial impossibility of making deliveries and the excess of transactions on the Chicago Board of Trade over the entire available grain production.

The question as to the validity of these contracts is an important one. If they are wagering contracts undoubtedly they are a great evil.

We respectfully submit that under the established principles the contracts which are here subject to review are wagering contracts and so void.

April, 1905.

Respectfully submitted.

JULIEN T. DAVIES,
ABRAM I. ELKUS,
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Frank Ray.

FILED
NOV 16 1904
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 224.

THE BOARD OF TRADE OF THE CITY OF CHICAGO, PETITIONER,

vs.

CHRISTIE GRAIN AND STOCK COMPANY.

OBJECTIONS OF RESPONDENT TO CONSOLIDATION OF THIS CASE WITH CASE OF THE L. A. KINSEY COMPANY ET AL., PETITIONERS, vs. THE BOARD OF TRADE OF THE CITY OF CHICAGO, No. 280.

JAMES H. HARKLESS,
CHARLES S. CRYSLER,
CLIFFORD HISTED,
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SUPREME COURT OF THE UNITED STATES.

FILE No. 19,378. TERM No. 280.

RECORD FILED MAY 31, 1904.

THE L. A. KINSEY COMPANY ET AL., PETITIONERS,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, RESPONDENT.

Answer of the Defendant to the Motion of Respondent to Set This Case for Hearing, Namely, The Board of Trade of Chicago against The Christie Grain and Stock Company, No. 224.

Now comes The Christie Grain and Stock Company, defendant in case No. 224 on this docket, entitled The Chicago Board of Trade against The Christie Grain and Stock Company, and, answering the motion of the said Board of Trade of Chicago in the above-entitled cause, says that it objects to the consolidation of the two causes and

their hearing and determination at one and the same time for the following reasons, to wit:

That the said two causes proceed upon different facts and involve different issues and considerations.

They also were not submitted upon the same testimony.

There are matters and considerations involved in the case in which respondent, The Christie Grain and Stock Company, is a party, to wit, case No. 224, that have no place in and may not be urged in case No. 280.

In case No. 280 there seems to be a large number of counsel who would desire to be heard, and they probably will expect to be heard fully with reference to their own cause. They have no interest and cannot argue matters appearing in case No. 224 which do not appear in and could not affect the ultimate decision in the above-entitled cause, No. 280. The decision in this case went upon a single one of several points and considerations that were urged in argument in the court of appeals; all of which points will of necessity be renewed in this court upon the hearing here, and no convenience of this court nor of counsel will be subserved by hearing the two cases as if they were one. In most, if not all, respects they are totally different.

All of which is respectfully submitted.

JAMES H. HARKLESS,
CHARLES S. CRYSLER and
CLIFFORD HISTED,
W. H. ROSSINGTON and
CHARLES BLOOD SMITH,
Attorneys for Christie Grain and Stock Co.

[Endorsed:] The L. A. Kinsey Co. *et al.*, petitioners, *vs.* Board of Trade of the City of Chicago, respondent. Objections of Christie Grain and Stock Company to consolidation of causes.

[Endorsed:] File No. 19,299. Supreme Court U. S., October term, 1904. Term No. 224. The Board of Trade of Chicago, petitioner, *vs.* The Christie Grain and Stock Co. Objections of respondent to consolidation of this cause with No. 280. Filed Nov. 14, 1904.

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 224. The Board of Trade of the City of Chicago, Petitioner, *vs.* Christie Grain and Stock Company and C. C. Christie.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.
No. 280. The L. A. Kinsey Company et al., Petitioners, *vs.* Board of Trade of the City of Chicago.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 8, 1905.]

Mr. Justice HOLMES delivered the opinion of the Court.

These are two bills in equity brought by the Chicago Board of Trade to enjoin the principal defendants from using and distributing the continuous quotations of prices on sales of grain and provisions for future delivery, which are collected by the plaintiff and which cannot be obtained by the defendants except through a known breach of the confidential terms on which the plaintiff communicates them. It is sufficient for the purposes of decision to state the facts without reciting the pleadings in detail. The plaintiff was incorporated by special charter of the State of Illinois on February 18, 1859. The charter incorporated an existing board of trade, and there seems to be no reason to doubt, as indeed is alleged by the Christie Grain and Stock Company, that it then managed its Chamber of Commerce substantially as it has since. The main feature of its management is that it maintains an exchange hall for the exclusive use of its members, which now has become one of the great grain and provision markets of the world. Three separated portions of this hall are known respectively as the Wheat Pit, the Corn Pit, and the Provision Pit. In these pits the members make sales and purchases exclusively for future delivery, the members dealing always as principals between themselves, and being bound practically, at least, as principals to those who employ them when they are not acting on their own behalf.

The quotation of the prices continuously offered and accepted in these pits during business hours are collected at the plaintiff's expense and

handed to the telegraph companies, which have their instruments close at hand, and by the latter are sent to a great number of offices. The telegraph companies all receive the quotations under a contract not to furnish them to any bucket shop or place where they are used as a basis for bets or illegal contracts. To that end they agree to submit applications to the Board of Trade for investigation, and to require the applicant, if satisfactory, to make a contract with the telegraph company and the Board of Trade, which, if observed, confines the information within a circle of persons all contracting with the Board of Trade. The principal defendants get and publish these quotations in some way not disclosed. It is said not to be proved that they get them wrongfully, even if the plaintiff has the rights which it claims. But as the defendants do not get them from the telegraph companies authorized to distribute them, have declined to sign the above-mentioned contracts, and deny the plaintiff's rights altogether, it is a reasonable conclusion that they get, and intend to get, their knowledge in a way which is wrongful unless their contention is maintained.

It is alleged in the bills that the principal defendants keep bucket shops, and the plaintiff's proof on that point fails, except so far as their refusal to sign the usual contracts may lead to an inference, but if the plaintiff has the rights which it alleges the failure is immaterial. The main defence is this. It is said that the plaintiff itself keeps the greatest of bucket shops, in the sense of an Illinois statute of June 6, 1887, that is, places wherein is permitted the pretended buying and selling of grain, &c., without any intention of receiving and paying for the property so bought, or of delivering the property so sold. On this ground it is contended that if under other circumstances there could be property in the quotations, which hardly is admitted, the subject matter is so infected with the plaintiff's own illegal conduct that it is *caput lupinum*, and may be carried off by any one at will.

It appears that in not less than three-quarters of the transactions in the grain pit there is no physical handing over of any grain, but that there is a settlement, either by the direct method, so called, or by what is known as ringing up. The direct method consists simply in setting off contracts to buy wheat of a certain amount at a certain time, against contracts to sell a like amount at the same time, and paying the difference of price in cash, at the end of the business day. The ring settlement is reached by a comparison of books among the clerks of the members buying and selling in the pit, and picking out a series of transactions which begins and ends with dealings which can be set against each other by eliminating those between—as, if A has sold to B five thousand bushels of May wheat, and B has sold the same amount to C, and C to D and D to A. Substituting D for B by

novation, A's sale can be set against his purchase, on simply paying the difference in price. The Circuit Court of Appeals for the Eighth Circuit took the defendant's view of these facts and ordered the bill to be dismissed. 125 Fed. Rep. 161. The Circuit Court of Appeals for the Seventh Circuit declined to follow this decision and granted an injunction as prayed. 130 Fed. Rep. 507. Thereupon writs of certiorari were granted by this Court and both cases are here.

As has appeared, the plaintiff's chamber of commerce is, in the first place, a great market, where, through its eighteen hundred members, is transacted a large part of the grain and provision business of the world. Of course, in a modern market contracts are not confined to sales for immediate delivery. People will endeavor to forecast the future and to make agreements according to their prophecy. Speculation of this kind by competent men is the self-adjustment of society to the probable. Its value is well known as a means of avoiding or mitigating catastrophes, equalizing prices and providing for periods of want. It is true that the success of the strong induces imitation by the weak, and that incompetent persons bring themselves to ruin by undertaking to speculate in their turn. But legislatures and courts generally have recognized that the natural evolutions of a complex society are to be touched only with a very cautious hand, and that such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain. This Court has upheld sales of stock for future delivery and the substitution of parties provided for by the rules of the Chicago Stock Exchange. *Clews* v. *Jamieson*, 182 U. S. 461.

When the Chicago Board of Trade was incorporated we cannot doubt that it was expected to afford a market for future as well as present sales, with the necessary incidents of such a market, and while the State of Illinois allows that charter to stand, we cannot believe that the pits, merely as places where future sales are made, are forbidden by the law. But again, the contracts made in the pits are contracts between the members. We must suppose that from the beginning as now, if a member had a contract with another member to buy a certain amount of wheat at a certain time and another to sell the same amount at the same time, it would be deemed unnecessary to exchange warehouse receipts. We must suppose that then as now, a settlement would be made by the payment of differences, after the analogy of a clearing house. This naturally would take place no less that the contracts were made in good faith for actual delivery, since the result of actual delivery would be to leave the parties just where they were before. Set-off has all the effects of delivery. The ring settlement is simply a more complex case of the same kind. These settlements would be

frequent, as the number of persons buying and selling was comparatively small.

The fact that contracts are satisfied in this way by set-off and the payment of differences detracts in no degree from the good faith of the parties, and if the parties know when they make such contracts that they are very likely to have a chance to satisfy them in that way and intend to make use of it, that fact is perfectly consistent with a serious business purpose and an intent that the contract shall mean what it says. There is no doubt, from the rules of the Board of Trade or the evidence, that the contracts made between the members are intended and supposed to be binding in manner and form as they are made. There is no doubt that a large part of those contracts is made for serious business purposes. Hedging, for instance, as it is called, is a means by which collectors and exporters of grain or other products, and manufacturers who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter contracts for the purchase or sale, as the case may be, of an equal quantity of the product, or of the material of manufacture. It is none the less a serious business contract for a legitimate and useful purpose that it may be offset before the time of delivery in case delivery should not be needed or desired.

Purchases made with the understanding that the contract will be settled by paying the difference between the contract and the market price at a certain time, (*Embrey* v. *Jemison*, 131 U. S. 336, *Weare Commission Co.* v. *People*, 209 Ill. 528,) stand on different ground from purchases made merely with the expectation that they will be satisfied by set-off. If the latter might fall within the statute of Illinois, we would not be the first to decide that they did when the object was self-protection in business and not merely a speculation entered into for its own sake. It seems to us an extraordinary and unlikely proposition that the dealings which give its character to the great market for future sales in this country are to be regarded as mere wagers or as "pretended" buying or selling, without any intention of receiving and paying for the property bought, or of delivering the property sold, within the meaning of the Illinois act. Such a view seems to us hardly consistent with the admitted fact that the quotations of prices from the market are of the utmost importance to the business world, and not least to the farmers; so important indeed, that it is argued here and has been held in Illinois that the quotations are clothed with a public use. It seems to us hardly consistent with the obvious purposes of the plaintiff's charter, or indeed with the words of the statute invoked. The sales in the pits are not pretended, but, as we have said, are meant and supposed to be binding. A set-off is in legal effect a delivery. We speak only of the contracts made in the pits, because in them the members are principals. The subsidiary rights of their

employers where the members buy as brokers we think it unnecessary to discuss.

In the view which we take, the proportion of the dealings in the pit which are settled in this way throws no light on the question of the proportion of serious dealings for legitimate business purposes to those which fairly can be classed as wagers or pretended contracts. No more does the fact that the contracts thus disposed of call for many times the total receipts of grain in Chicago. The fact that they can be and are set-off sufficiently explains the possibility, which is no more wonderful than the enormous disproportion between the currency of the country and contracts for the payment of money, many of which in like manner are set off in clearing houses without any one dreaming that they are not paid, and for the rest of which the same money suffices in succession, the less being needed the more rapid the circulation is.

But suppose that the Board of Trade does keep a place where pretended and unlawful buying and selling are permitted, which as yet the Supreme Court of Illinois, we believe, has been careful not to intimate, it does not follow that it should not be protected in this suit. The question whether it should be involves several elements which we shall take up in turn.

In the first place, apart from special objections, the plaintiff's collection of quotations is entitled to the protection of the law. It stands like a trade secret. The plaintiff has the right to keep the work which it has done, or paid for doing, to itself. The fact that others might do similar work, if they might, does not authorize them to steal the plaintiff's. Compare *Bleistein* v. *Donaldson Lithographing Co.*, 188 U. S. 239, 249, 250. The plaintiff does not lose its rights by communicating the result to persons, even if many, in confidential relations to itself, under a contract not to make it public, and strangers to the trust will be restrained from getting at the knowledge by inducing a breach of trust and using knowledge obtained by such a breach. *Exchange Telegraph Co.* v. *Gregory & Co.*, [1896] 1 Q. B. D. 147. *F. W. Dodge Co.* v. *Construction Information Co.*, 183 Mass. 62. *Board of Trade* v. *C. B. Thompson Commission Co.*, 103 Fed. Rep. 902. *Board of Trade* v. *Haddon-Krull Co.*, 109 Fed. Rep. 705. *National Tel. News Co.* v. *Western Union Tel. Co.*, 119 Fed. Rep. 294. *Illinois Commission Co.* v. *Cleveland Tel. Co.*, 119 Fed. Rep. 301.

The publications insisted on in some of the arguments were publications in breach of contract, and do not affect the plaintiff's rights. Time is of the essence in matters like this, and it fairly may be said that, if the contracts with the plaintiff are kept, the information will not become public property until the plaintiff has gained its reward. A priority of a few minutes probably is enough.

If then the plaintiff's collection of information is otherwise entitled to protection, it does not cease to be so, even if it is information concerning illegal acts. The statistics of crime are property to the same extent as any other statistics, even if collected by a criminal who furnishes some of the data. The Supreme Court of Illinois has recognized in the fullest terms the value and necessity of the knowledge which the plaintiffs control. It must have known, even if it did not have the evidence before it, as to which we cannot tell from the report, what was the course of dealing on the exchange. Yet it was so far from suggesting that the plaintiff's work was unmeritorious that it held it clothed with a public use. *New York & Chicago Grain & Stock Exchange* v. *Board of Trade*, 127 Ill. 153.

The defendants lay hold of the declaration in the case last cited and say, with doubtful consistency, that this information is of such importance that it is clothed with a public use, and that, therefore, they are entitled to get and use it. In the case referred to it was held that the plaintiff, which had been receiving the continuous quotations, was entitled still to receive them on paying for them and submitting to all reasonable requirements in relation to the same. Perhaps the right of the plaintiff would have been more obvious if it had demanded an opportunity on reasonable conditions of collecting the information for itself, especially if the legislature had seen fit to provide by law for its doing so. But it is not necessary to consider whether we are bound by that decision, or, if not, should follow it, since in these cases the claim is not qualified by submission to reasonable rules or an offer of payment. It is a claim of independent rights and a denial that the plaintiff has any right at all. The Supreme Court of Illinois gave no sanction to such a claim as that.

Finally it is urged that the contracts with the telegraph companies violate the act of July 2, 1890, c. 647, (26 Stat. 209.) The short answer is that the contracts are not relied on as a cause of action. They are stated simply to show that the only communication of its collected facts by the plaintiff is a confidential communication, and does not destroy the plaintiff's rights. But so far as these contracts limit the communication of what the plaintiff might have refrained from communicating to any one, there is no monopoly or attempt at monopoly, and no contract in restraint of trade, either under the statute or at common law. *E. Bement & Sons* v. *National Harrow Co.*, 186 U. S. 70. *Fowle* v. *Park*, 131 U. S. 88. *Elliman* v. *Carrington*, [1901] 2 Ch. 275. It is argued that the true purpose is to exclude all persons who do not deal through members of the Board of Trade. Whether there is anything in the law to hinder these regulations being made with that intent we shall not consider, as we do not regard such a general scheme as shown by the contracts or proved. A scheme to exclude bucket shops is shown and proclaimed, no doubt—and the de-

fendants, with their contention as to the plaintiff, call this an attempt at a monopoly in bucket shops. But it is simply a restraint on the acquisition for illegal purposes of the fruits of the plaintiff's work. *Central Stock & Grain Exchange* v. *Board of Trade*, 196 Ill. 396. We are of opinion that the plaintiff is entitled to an injunction as prayed.

Decree in No. 224 reversed.
Decree in No. 280 affirmed.

Mr. Justice HARLAN, Mr. Justice BREWER and Mr. Justice DAY dissent.

True copy.

Test:

Clerk Supreme Court, U. S.